

MIRROR WORLDS, LLC * Civil Docket No.
*
* 6:08-CV-88
VS. * Tyler, Texas
*
* September 27, 2010
APPLE, INC., ET AL * 8:30 A.M.

TRANSCRIPT OF JURY TRIAL
MORNING SESSION
BEFORE THE HONORABLE LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

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(Jury out.)

COURTROOM DEPUTY: All rise.

THE COURT: Please be seated.

All right. I understand we have a couple of pretrial matters the parties would like to take up; is that correct?

MR. CARROLL: If the Court, please, Your Honor.

THE COURT: Okay. Mr. Carroll.

MR. CARROLL: Good morning, Your Honor. Otis Carroll for the Plaintiffs. We were unable to resolve a handful of limine issues that we feel like we need to have the Court's help on before we open the case.

THE COURT: All right.

MR. CARROLL: And we at least think they are pretty straightforward. Our friends on the other side don't agree.

And the first and maybe one of the more important ones is Apple wants to talk about what's happening in the Patent Office on re-exam.

THE COURT: Okay. All right. That motion in limine is granted.

What's next?

of opening slides on that, so we know they will take care of those.

THE COURT: Did you want to be heard on that? I ruled on this previously. I don't normally allow that. If you've got something new you'd like to add, but...

MR. RANDALL: Your Honor, may I address the Court?

THE COURT: Sure. Uh-huh.

MR. RANDALL: Your Honor, Jeff Randall for Apple.

The reason I -- I want to get into that issue is because it relates to damages and the negotiation that would take place, the hypothetical negotiation, regarding damages. And at that time, if -- and their -- their damages experts believes in the book of wisdom that you can look forward; you know everything that's going to go forward.

And if the person knew everything going forward, that person, the hypothetical negotiator, would know that these patents have been rejected in re-exam and stand rejected in re-exam. And that would greatly affect the price of the negotiation for damages.

It also affects willfulness, Your Honor,

1 and that is, that they want to make a claim for willful
2 infringement. And the claims, all of them, stand
3 rejected in the Patent Office right now.

4 We believe that the re-exam proceedings
5 and the current rejection of all the claims relates both
6 to damages and to willfulness.

7 THE COURT: Okay. Mr. Carroll?

8 MR. CARROLL: Your Honor, there's no way
9 the jury can hear about the Patent Office and rejection
10 and compartmentalize that.

11 This is the same issue that we had in
12 that Forgent and EchoStar case when all the patents had
13 been killed, and the Court considered even giving an
14 instruction and then realized that it simply would open
15 up a whole new vista of testimony. And that is, what's
16 happening in the Patent Office, what does it mean,
17 what's left. And it's -- it's a huge dog fight.

18 THE COURT: Okay. Thank you.

19 Motion in Limine No. 1 is granted.

20 Let's --

21 MR. CARROLL: The second, Your Honor,
22 and, again, we believe this is pretty simple. They want
23 to talk about their inequitable conduct claim in front
24 of the jury. We don't think that's proper.

25 It's not a jury issue. There will be

2 THE COURT: Response?

3 MR. RANDALL: Your Honor, we believe that
4 the Court both has the -- certainly the authority, and
5 should in this case allow the factual issues that
6 have -- that are common, both the inequitable conduct
7 and to the facts that will go before the jury regarding
8 invalidity, to have those issues tried by a jury.

9 We believe that the case law is clear
10 that indicates that, for instance, one of the articles
11 written by the inventors, TR-1070, Technical Report
12 1070, was provided to the Patent Office by Mirror
13 Worlds, with the representation attached to it that said
14 this is not public; it's never been public; it's been
15 under lock and key at Yale; and it's never been publicly
16 disclosed.

17 That's false. And that's an issue that
18 will go to the jury on whether or not that prior art,
19 which we believe is invalidating prior art, was, in
20 fact, publicly available. That is a big issue that will
21 go to the jury.

22 So there are a host of issues that
23 have -- there are common, number one, that should go to
24 the jury. Like whether the TR-1070 really was public or
25 not, was it considered or not, given their

1 representation to the Patent Office that it's not
2 public. That is one discrete issue that is -- has a
3 huge common overlap, and it's a big issue in this case
4 on whether those patents are invalid.

5 THE COURT: Well, the issue of whether it
6 was public or not, why can't you address that without
7 going into whether that was -- how -- how it was
8 represented to the Patent Office with the jury?

9 MR. RANDALL: Well, because that's --
10 that's why the -- that's -- at least our contention why
11 the Patent Office didn't consider it, because they
12 represented -- Mirror Worlds --

13 THE COURT: I know that, but that gets
14 into the inequitable conduct, which is a defense for the
15 Court, not for the jury.

16 MR. RANDALL: Well, the ultimate
17 decision -- you're right, Your Honor, and I don't
18 disagree with that.

19 The ultimate issue on inequitable conduct
20 is the Court's, but it's the underlying factual issues
21 that are common both to invalidity and to inequitable
22 conduct that should go to the jury, namely, the TR-1070
23 issue of whether it's public or not.

24 THE COURT: Okay. Thank you.

25 Motion in Limine No. 2 is granted.

MR. CARROLL: Thank you, Your Honor.

The third one is the issue of improper inventorship, our Motion in Limine No. 4. We believe that's an inequitable claim.

THE COURT: All right. Response?

MR. RANDALL: Your Honor, the inventorship issue is not -- I don't intend to present the inventorship issue per se to the jury, but the issue of whether or not -- when Mr. Gelernter takes the stand and when Mr. Carroll says in opening -- and when Mr. Gelernter takes the stand and says I'm the inventor, he wasn't even listed as an inventor for a long period of time in the Patent Office. And so I believe that it's -- it's relevant to the witness' testimony and his credibility when he says, I'm the inventor, that he actually didn't step forward ever voluntarily. And ultimately later, much later in the prosecution, finally stepped forward and said: Okay, I'll be out as an inventor.

So the issue of really who invented it -- and there's other inventors also that aren't listed. And so the real issue is: Who is the inventor? They're going to wrap this patent around Dr. Gelernter. I know they are; we all know they are. And the issue

1 is shouldn't be able to cross-examine Dr. Gelernter
2 on the issue of, well, if you invented all of this and
3 knew about these -- this patent process, why weren't you
4 there at the outset saying: Whoa, whoa, wait a minute,
5 Dr. Freeman. I'm the inventor. I should move forward.
6 Either not you or I should join you.

7 THE COURT: All right. I agree with you.
8 I will deny Motion in Limine No. 4.

9 What's next?

10 MR. CARROLL: Your Honor, may I ask for a
11 qualification?

12 I don't have any problem with him going
13 through the cross as he's described as long as he
14 doesn't tie it to any defense, like inventorship,
15 inequitable conduct.

16 THE COURT: I don't think you intend to
17 do that.

18 MR. RANDALL: No.

19 MR. CARROLL: That's fine, Your Honor.
20 Thank you.

21 And then the other one is Motion in
22 Limine No. 6, which is the mention of litigation claims
23 or actions involving Mirror Worlds and its related
24 entities.

25 Apple intends to, for instance, accuse

1 the present owner of the patent of income tax fraud. We
2 don't know where that has anything to do with the patent
3 infringement case.

4 MR. RANDALL: Well, I don't know where
5 that came from. I don't intend at all to make any claim
6 of income tax fraud. There's only one factual issue
7 that relates to that, and that is that a owner of the
8 patent at a certain period of time listed in their tax
9 return that the assets, all the patents, were worth -- I
10 don't know -- \$210,000, something like that.

11 That's it. I'm not going to say that's
12 fraudulent or anything else. I think it's probably
13 accurate.

14 THE COURT: Okay. Motion in Limine No. 6
15 is denied.

16 What's next?

17 MR. CARROLL: The other one is the Motion
18 7, Your Honor, and that is, any comment that certain
19 claims of '227 have been previously found by you to be
20 invalid.

21 THE COURT: Okay.

22 MR. RANDALL: Your Honor, for the same
23 reason I discussed before, it relates to both a damages
24 and willfulness defense.

25 THE COURT: Okay. Motion in Limine No. 7

2 MR. CARROLL: The next one is, Your
3 Honor, that any of their third-party prior art inventors
4 shouldn't be allowed to go outside of the four corners
5 of the reference.

6 And the specific concern we have is that
7 they put up these people to say, well, you know, we
8 could have made it this and we could have made it this,
9 and enlarge what the reference actually says. That's
10 our only concern.

11 MR. RANDALL: Your Honor, these -- these
12 are the authors of various publications. Not only are
13 they authors of the publications that are prior art, but
14 they also have percipient knowledge regarding the
15 operation of the systems.

16 And so we have alleged as prior art not
17 just the articles and the publications but also the
18 operation of the systems and the public nature of the
19 operation of the systems. And these witnesses are
20 testifying about both.

21 THE COURT: Okay. Motion in Limine
22 No. 10 is denied, but it and all of these are simply
23 rulings without prejudice to -- Mr. Carroll, you can
24 state an objection, if you think he's going too far in
25 trying to expand the scope of the prior art beyond --

1 beyond what it is

2 And same for all these motions in Limine.

3 You know, this is without prejudice to anybody

4 re-raising or arguing or making any offers they wish to

5 at any time.

6 MR. CARROLL: Thank you, Your Honor.

7 THE COURT: All right.

8 MR. CARROLL: We understand.

9 Last one for us is No. 9, and that is -- and maybe it's
10 better if we simply -- for us to request an instruction
11 from the Court that any time -- excuse me -- Apple's
12 talking about other patents, whether it's their
13 counterclaim patent or any patents that might be cited
14 as prior art, that the Court instruct the jury that
15 those patents are not to be considered as a defense to
16 our infringement claim.

17 MR. RANDALL: Your Honor, I don't -- I
18 don't quite understand that.
19 I do know that if it's invalid, then there's no
20 infringement. Invalidity is a defense to infringement,
21 and I probably -- that will probably come out of my
22 mouth at some point that if the patents are --

23 THE COURT: I'm not sure what you're
24 asking for.

25 MR. CARROLL: I'm asking, Your Honor, at

1 the time that any of these other patents come up,
2 THE COURT: Other patents, prior art
3 patents?

4 MR. CARROLL: Prior art patents and their
5 counterclaim patent, that the Court consider giving the
6 jury an instruction that the mere existence of other
7 patents is not a defense to infringement, so that they
8 can't essentially say we're not infringing, because
9 here's our patent.

10 THE COURT: Well, I'll consider any
11 instruction you wish to propose at any point. I think
12 something like that would probably be best handled in
13 the Court's Charge at the end, rather than during the
14 course of the trial. But I'll consider it, if you wish
15 to propose something.

16 MR. CARROLL: Thank you, Your Honor.

17 THE COURT: All right.

18 MR. CARROLL: And, Your Honor, these
19 are -- that's all of our limine issues. We've got a
20 handful of other quick issues, unless their limine --

21 THE COURT: Let's hear Apple's limine
22 issues.

23 MR. RANDALL: I also have a couple of
24 other procedural issues, but on the motions in limine
25 issues, Your Honor --

any objections to those.

MR. RANDALL: Well, let me just -- Your Honor, may I state the motions in limine that I'd like to address?

THE COURT: Yes. Uh-huh.

MR. RANDALL: Okay. Motion in Limine No. 1 is to exclude from evidence discussions with Intellectual Ventures regarding purchasing Mirror Worlds' patents.

Apparently, they want to introduce multiple levels of hearsay and say that one of their executives at one time had a conversation with Intellectual Ventures, and they offered to purchase these patents for some sum of money.

The executives from the entity in question, Mr. Stone, Mr. Weil, and Mr. Wyatt, all said that they don't recall any offer being made. There's no evidence whatsoever that any such offer was ever made, and it's pure hearsay and it's prejudicial.

THE COURT: Okay. Response?

MR. CARROLL: Your Honor, there are -- first of all, the evidence is in the form of a deposition of one of our people. And Intellectual Ventures, the evidence is clear -- and their damage man

1 agrees with this -- is a combine on the West Coast in
2 which Apple participates, along with some other big
3 companies. And this combine buys up intellectual
4 property.

5 There is one written offer from this
6 Intellectual Ventures, before we filed the lawsuit, for
7 \$7 million and a 10-percent carry on the returns of the
8 patent. They don't object about that.

9 One of our employees, a Mr. Riach,
10 testified that after the lawsuit, Intellectual Ventures
11 up the ante to a 30- to 50-million-dollar offer. They
12 say they don't know anything about it, and there's no
13 proof.

14 We've got testimony. That's a pure fact
15 issue. Our damage person takes that into consideration.
16 So just because they say they don't think it's true,
17 that doesn't mean that it's not a fact issue.

18 THE COURT: All right. Motion in Limine
19 No. 1 is denied.

20 Next?

21 MR. RANDALL: Motion in Limine No. 2,
22 Your Honor, is to exclude evidence of worldwide sales
23 for products made and sold outside the U.S., and they've
24 got, you know, a host of opening slides that reference
25 all this revenue.

by day and say that that's how much Apple is making. It has nothing to do with the damages in this case nor the infringement allegations in this case. And it shouldn't come in.

THE COURT: Response?

MR. CARROLL: Your Honor, we have one slide that refers to worldwide sales and one era and U.S. sales in another area -- era. And our damage man looks to that under the -- I can't think of the case name now -- Georgia-Pacific; I can't believe I couldn't remember that -- as one of the Georgia-Pacific Factors that indicates the success of the patent.

We have no evidence and will not put on any testimony about any damages that we claim other than from U.S. sales.

Mr. Randall's talking about the fact that we want to talk to the jury about that from U.S. sales alone of infringing products, Apple will make \$50 million today, U.S. sales, not worldwide sales.

So we don't have any evidence that we're going to use the worldwide sales on to ask the jury for damages. Our man only is going to use that to say this is an indication as to how successful the accused products in the infringed patents work.

it's been narrowed down, but the point is, is that worldwide sales and whatever activity takes place worldwide is both prejudicial and has no relevance whatsoever to the U.S. domestic allegations of infringement and any damages that are associated with that activity.

THE COURT: Mr. Carroll, do you have any case that says that under Georgia-Pacific, he can take worldwide sales?

MR. CARROLL: Not that I know of. Your Honor, we'll pull that slide.

THE COURT: Okay. I think that would be best.

All right. I'll grant Motion in Limine No. 2.

What's next?

MR. RANDALL: Motion in Limine No. 5, Your Honor, it's -- that issue involves a -- again, multiple levels of hearsay.

The -- there's a PowerPoint slide that some -- that they believe exists -- Mirror Worlds -- where one of their executives, Mr. Satow, apparently was on the phone with an Apple employee, and they say that there was this PowerPoint presentation that was

presented during the call, maybe on a web presentation

And we've asked for that. We've said, okay, if this exists, produce it. We'd like to have a copy of it. So they've said it was destroyed or missing; it doesn't exist. There is no such thing. They haven't produced it, and yet they want to testify about the contents of what that may have said. And that's what the motion in limine is directed to.

MR. CARROLL: Your Honor, Mr. Satow was the -- Mirror Worlds' rep in a teleconference that Apple requested and set up about licensing. And, in fact, he did have a PowerPoint that he presented to Apple. In fact, it is gone, and he does want to talk about what he told Apple during this real negotiation.

And I think that goes to the weight.

THE COURT: All right. Motion in Limine No. 5 is denied.

All right. Any further limine matters by Apple?

MR. RANDALL: No, Your Honor.

THE COURT: All right.

MR. RANDALL: Not in limine.

THE COURT: All right. Mr. Carroll, other issues?

MR. CARROLL: Your Honor, just a couple.

1 We -- we proposed junior notebooks without prior art.

2 Apple wants prior art. We don't think that belongs in
3 there. We think it ought to be the patents-in-suit,
4 theirs and ours, and the Court's claim construction.

5 THE COURT: All right. How much prior
6 art is there that would be included in the notebook?

7 MR. RANDALL: Do you mind if I ask my
8 colleague, Your Honor?

9 THE COURT: Okay.

10 MR. RANDALL: Your Honor, I've been told
11 there's about ten references, and that's it. And we
12 believe that it places unnecessary -- sorry.

13 THE COURT: And what are the references?

14 MR. RANDALL: They are the key prior art
15 references that will be utilized in this case, Your
16 Honor.

17 THE COURT: I know, but what are they?
18 Are they patents, or what are they?

19 MR. RANDALL: Your Honor, I have the book
20 here. There are -- there are six patents and three
21 articles, Your Honor. And the book is right here; it's
22 not huge.

23 THE COURT: And what is your objection to
24 having the prior art?

25 MR. CARROLL: It's distractive, Your

Honor. And their -- their invalidity case won't come
until the tail end of the case. And if they want to ask
you to insert that stuff in the jurors' notebooks at a
time that the jurors will be hearing about it, then we
wouldn't have any problem with it, but at the --

THE COURT: Okay. What we'll do then,
I'll allow the jurors to have a notebook with just the
patents in it for the case-in-chief. When you get to
your invalidity case, if you want to have just those ten
references no thicker than about an inch, and have those
ready, we'll pass those out to the jury as well.

MR. RANDALL: Your Honor, we actually --
since they're going to put invent -- one or more
inventors up to testify, it's likely that we will ask
them some questions about this -- this art, which they
are fully aware of, and -- and so it would be helpful if
the jurors could at least have both.

THE COURT: I don't want these jurors to
be burdened down with big -- I mean -- all right. I'm
just going to go with just the patents then, no prior
art.

MR. RANDALL: Thank you, Your Honor.

THE COURT: Anything further?

MR. CARROLL: Last issue, Your Honor.

We've got -- Mr. Tribble is the Apple corporate rep, and

1 we've had a flap over whether he would be here or

2 wouldn't be here, whether they would or wouldn't give

3 him to us for a deposition.

4 Apparently, he's going to testify. We've
5 asked for a brief two-hour deposition sometime at night
6 during the trial before they put him on. They won't let
7 us have him, and we've had this problem.

8 And I think it's brief, correct? Is that
9 right?

10 The issue over Mr. Tribble and his
11 deposition, is that written -- in writing before the
12 Court?

13 MR. STEIN: We moved to exclude
14 Mr. Tribble; that was denied. And in my brief, we
15 requested his deposition.

16 MR. CARROLL: So that -- and for all the
17 reasons that we had asked you to exclude him, we're now
18 asking that we have a quick crack at him during the
19 trial.

20 THE COURT: Okay.

21 MR. RANDALL: Your Honor, you did deny
22 their motion to exclude him, number one.

23 Number two, they've known about him since
24 at least June, and we offered Mr. Tribble, during
25 discovery, as a 30(b)(6) witness on a host of topics,

1 and they declined. They said, no, we don't want to take
2 him.

3 THE COURT: Are you going to have him
4 testify in trial?

5 MR. RANDALL: Yes, Your Honor, briefly.

6 THE COURT: All right. And why didn't
7 you take him during discovery?

8 MR. CARROLL: I don't know the answer to
9 that, Your Honor. We'll do this: We'll pull that down,
10 unless I can give you a good answer as to why we didn't
11 take his deposition.

12 MR. STEIN: He was designated to testify
13 regarding certain e-mails that Mr. Jobs had sent to the
14 executives, and we decided that given the limited scope
15 of what he was designated for that it wasn't required.

16 THE COURT: Do you know what he's going
17 to testify to in the trial?

18 MR. STEIN: No, we do not.

19 THE COURT: What's he going to testify to
20 during the trial?

21 MR. RANDALL: General background of Apple
22 and kind of a history of Apple in terms of the
23 development of a few of the accused products but not in
24 detail about the accused products.

25 We have other witnesses that will talk

1 about the detail of the accused products that they've
2 proposed.

3 THE COURT: All right. You can take a
4 one-hour deposition just to flesh out what he's going to
5 testify about.

6 MR. CARROLL: Thank you, Your Honor.

7 THE COURT: All right. Anything further?

8 MR. CARROLL: That's it for us.

9 THE COURT: All right. Anything further
10 from Apple?

11 MR. RANDALL: Yes, Your Honor.

12 First is that we would like to invoke Federal Rule of
13 Evidence 615 to exclude from both the opening and the
14 presentation of evidence the testifying witnesses in
15 this case, aside from the experts. We're not addressing
16 that rule to the experts.

17 THE COURT: Okay. So you're going to
18 invoke the rule?

19 MR. RANDALL: That's right, Your Honor.

20 THE COURT: All right. Any objection to
21 that?

22 MR. CARROLL: No, Your Honor.

23 Dr. Gelernter will be our corporate rep.

24 THE COURT: Okay.

25 MR. RANDALL: Your Honor?

from opening and everything?

MR. RANDALL: Including Dr. Gelernter, yes. And the reason for that, Your Honor, is that Dr. Gelernter is not a party to this case, and he is not an employee of a party to this case.

And, therefore, he doesn't fall within any exception that would allow him to be a corporate representative in this case.

MR. CARROLL: Your Honor, we designated him as our corporate rep when we picked the jury on September the 7th, and they didn't squawk. And I explained to the jury that he would be our corporate rep and sitting through the whole trial, and they said nothing.

THE COURT: Response to that?

MR. RANDALL: Well, I'm looking at the transcript right now, and he did no such thing, Your Honor. He did not say that Mr. Gelernter is -- he said Mr. Gelernter is the inventor.

And this is a key issue. He said Mr. Gelernter is the inventor. He said Mr. Gelernter is a victim of the Unabomber.

That is a big issue. There's no question that Dr. Gelernter is going to take the stand; he's

1 going to testify as a fact witness he's the inventor
2 And there's no question that there are certain
3 extenuating circumstances regarding his testimony,
4 because he's a Unabomber victim.

5 Those are issues that the jury, in
6 selecting a jury, should be aware of, and I should be
7 able to probe and decide whether they're biased in any
8 way on that issue.

9 But they did not designate him as their
10 corporate representative in this case. And in any
11 event, the trial hasn't started. The trial starts, you
12 know, today. And he doesn't -- he doesn't fit within
13 the category of a corporate designee nor should he be.

14 MR. RANDALL: He's got a 2-percent
15 interest in the outcome of the case.

16 THE COURT: All right. The -- he will be
17 designated as your corporate representative then.

18 What else?

19 MR. RANDALL: Your Honor, there's certain
20 legal issues I would like to --

21 THE COURT: Counsel, let me just ask, I
22 mean, what is the prejudice to Apple of having
23 Dr. Gelernter as their corporate representative?

24 MR. RANDALL: Well, it's the same -- it's
25 the same prejudice that any other witness would have.

1 And that is, that there is -- the U.S. Supreme Court has
2 indicated this and numerous circuit courts of appeal
3 have noted this, that the rule is intended to avoid
4 having anybody possibly tailor their testimony, and
5 there is no finding by the Court necessary that --

6 THE COURT: Well, you're excluding all
7 the experts, right?

8 MR. RANDALL: No, Your Honor, not all the
9 experts.

10 THE COURT: I thought you said all the
11 experts were going to be excluded from the rule. I
12 thought you invoked the rule, except for all experts.

13 MR. RANDALL: That's right.

14 THE COURT: Okay.

15 MR. RANDALL: And there are some cases
16 that say that experts are essential to the presentation
17 of a case.

18 THE COURT: Okay.

19 MR. RANDALL: And -- and some say yes;
20 some say no.

21 THE COURT: So what is Dr. Gelernter's
22 role in the -- in the case?

23 MR. CARROLL: He's the fact witness.
24 He's going to tell the invention story. He's going to
25 be the first witness, so he can't tailor his testimony

1 to anybody's, and then he'll be done

2 MR. RANDALL: Then our case on that as
3 well. He's not going to be done, because he is subject
4 to recall and then called in our case-in-chief.

5 But the point is, during opening and
6 during the trial, he is not essential to the
7 presentation of their case. He is an inventor, and
8 that's it. He's a factual witness. He's not an
9 employee. He's not an officer. He has no interest in
10 the Plaintiff, no ownership interest in the Plaintiff.

11 THE COURT: Is he -- is he your corporate
12 representative or not?

13 MR. CARROLL: He is, Your Honor. And
14 he's got a 2-percent interest in the outcome of the
15 case. And, you know, I don't understand why Apple can
16 tell us what is and is not essential for the way we put
17 our case on.

18 THE COURT: All right. I stand by my
19 ruling.

20 Anything further?

21 MR. RANDALL: Yes, Your Honor.

22 THE COURT: Does Apple have anything
23 further?

24 MR. RANDALL: Yes, Your Honor. I'm
25 sorry.

prior art in this case that was not considered by the Patent Office, but we believe that there should be no presumption of validity that attaches to the patents-in-suit.

We also believe --

THE COURT: All right. You know, I'm happy regarding your beliefs, but what are you asking me to do?

It sounds like something that you would be asking for in the jury charge. Or in the preliminary instructions, are you asking me not to instruct on the presumption of the validity?

MR. RANDALL: Yes, with respect to un --

THE COURT: Okay. That's denied.

What's next?

MR. RANDALL: The next issue is that Apple contends that the clear-and-convincing-evidence standard to prove invalidity should not attach to the prior art that was not considered by the Patent Office.

THE COURT: Okay. That's denied.

Anything further?

MR. RANDALL: No, Your Honor. That's it.

THE COURT: All right. Very well.

Now, have y'all resolved this issue

1 regarding -- or have we covered it regarding the
2 supplemental expert report of Levy? Apple's motion to
3 strike the untimely supplemental expert rebuttal report
4 of John Levy, Docket No. 389?

5 MR. RANDALL: No, we have not, Your
6 Honor.

7 THE COURT: Do you wish to address that?

8 MR. RANDALL: Yes, Your Honor. If you
9 would give me one moment.

10 THE COURT: All right.

11 MR. RANDALL: Your Honor, that issue is
12 that there was no agreement that would permit Dr. Levy
13 to submit a supplemental expert report. And he put it
14 in right before the trial. It's not appropriate, and it
15 shouldn't have been provided.

16 MR. STEIN: That's not true. There was
17 an agreement. Apple produced hundreds of prior art
18 references shortly before the close of discovery. It
19 was two days before opening expert reports were due, and
20 the parties reached an agreement to try to resolve that
21 issue, and that would permit Dr. Levy to submit a
22 supplemental report.

23 MR. RANDALL: And, Your Honor, there's
24 no -- there is no agreement that we said he could submit
25 a supplemental report, but even -- and there wasn't.

1 But even if there was submitting it in June or July
2 would be perhaps a different story, but right on the eve
3 of trial, submitting a new expert --

4 THE COURT: Didn't Apple have something
5 like 4,000 prior art references back in June when his
6 first report was taken?

7 MR. RANDALL: No, Your Honor. I don't
8 think it was 4,000.

9 THE COURT: What was it? Wasn't it a
10 large -- I mean, in my review of this, it seems like
11 both sides have been shotgunning and not narrowing down.
12 And Apple just got their prior art narrowed down, and
13 then there's this issue of whether Levy -- there was an
14 agreement or not an agreement.

15 I mean, is there something in his
16 supplemental report that's new or surprising to you or
17 that is prejudicial to Apple?

18 MR. RANDALL: He does address a host of
19 issues regarding prior art that was in our non -- in our
20 invalidity contentions that we provided them back in the
21 summertime. I think it was in late -- sometime in June,
22 I believe.

23 So we submitted this thing in June, and
24 he doesn't respond to it until the eve of trial.

25 MR. STEIN: When they submitted their --

1 Dr. Feiner's report, which was the report that Dr. Levy
2 was responding to, there were hundreds of prior art
3 references in there, and there were some that were
4 highlighted there, which is what Dr. Levy focused on;
5 and then there were these, you know, a hundred-plus
6 additional references comprising thousands of pages,
7 which in the report -- Dr. Feiner's report itself
8 comprised thousands of pages when you included the
9 claim -- the claim charts he attached to it.

10 So we did what was reasonable under the
11 circumstances and focused on the prior art that Apple
12 had focused on itself. And then we have filed a motion
13 to strike the --

14 THE COURT: All right. Motion to strike
15 supplemental report is denied.

16 Anything further before we bring the jury
17 in?

18 MR. CARROLL: Not from the Plaintiff,
19 Your Honor.

20 MR. RANDALL: None from the Defendant,
21 Your Honor.

22 THE COURT: All right. Bring the jury
23 in, please.

24 Hold the jury a second.

25 COURT SECURITY OFFICER: All rise for the

2 THE COURT: Hold the jury a second.

3 We're not quite ready. We have one clerical thing we
4 have to take care of first. I apologize.

5 We'll be in recess for five minutes.

6 We've got the get the instructions.

7 (Recess.)

8 COURT SECURITY OFFICER: All rise.

9 (Jury in.)

10 THE COURT: Please be seated.

11 All right. Good morning, Ladies and
12 Gentlemen of the Jury. Thank you for being back here
13 promptly.

14 I really want to apologize to you. I
15 hate nothing worse than telling the jury to be here at
16 9:00 o'clock in the morning, and then we leave you
17 sitting in there twiddling your thumbs until 9:20. And
18 I'm going to do my very best to not have that happen
19 again during the course of the trial.

20 As I told you during jury selection,
21 today we're going to start the trial. I'm going to give
22 you some preliminary instructions, and you can listen to
23 those. And then the attorneys are going to do their
24 opening statements, and then we'll start into the
25 evidence.

instructions.

Again, congratulations. You have now been sworn as the jury who is going to decide and hear this case. Your role as the jury is going to be to decide all disputed questions of fact.

And, on the other hand, it is my role as the Judge to decide all questions of law and procedure; that is, you'll take my instructions on the law and on the procedure; I will rule on what's admissible, what's not admissible; I'll instruct you on what the law is. You're to follow all of those instructions. But you are the sole judges of the facts to be decided.

And at the end of the case, you're going to have some questions to answer, and they're fairly simple questions of -- dealing with infringement, dealing with invalidity, dealing with willfulness, and dealing with damages. And those are the fact questions that you're going to be deciding.

Today we're beginning the trial of the case. After I have completed my preliminary instructions, you will then hear the attorneys' opening statements.

Remember that an opening statement is only an overview, sort of a roadmap, of what each side

2 say during their opening statement is not evidence. The
3 witness stand here is where you'll hear the testimony
4 and all the evidence from and the documents that I admit
5 into evidence.

6 After opening statements, the Plaintiff
7 will present its evidence. Then the Defendant will
8 present its evidence. And finally, the Plaintiff will
9 present any rebuttal evidence.

10 Once all of the evidence is in, I will
11 give you my final instructions, after which both sides
12 will then present their closing arguments, and finally,
13 you will then retire to the jury room to begin your
14 deliberations and reach your verdict.

15 Again, at that point in time, after all
16 the case is -- evidence is in, the arguments are
17 presented, and my final instructions to you, that's the
18 first time that you'll discuss the case among yourselves
19 and begin your deliberations.

20 During the course of the trial, I want
21 you to keep an open mind until you've heard all of the
22 evidence and my instructions -- my final instructions
23 are what's known as the Court's charge -- and the
24 attorneys closing arguments.

25 Be sure to pay close attention to all of

1 the testimony and evidence. To help you, you may take
2 notes during the trial, if you wish. I'm going to ask
3 the Court Security Officer to pass out to you now a
4 juror notebook that is being provided for your
5 convenience.

6 When you get that, on the inside cover,
7 you will find a number of things. You should find a pen
8 or pencil in there, and I'd like you to take the pen or
9 pencil and then slide that top sheet of your notebook
10 out and write your name on the cover of your notebook so
11 that we will be able to identify whose notebook is
12 whose.

13 It should just slide -- the cover sheet
14 on the front cover of the notebook inside that clear
15 blastic (sic) -- clear plastic sheet, just slide that
16 out, write your name on the top, and then slide it back
17 in.

18 And after you've done that, also write
19 your name on the cover of the stenographic pad that's on
20 the inside.

21 At the end of each day's testimony, you
22 will turn in your notebook, and it will be kept by the
23 Courtroom Deputy Clerk. Everything you write in it will
24 be confidential; and at the end of the case, it will be
25 shredded.

do decide to take notes, don't get so involved in your note-taking that you become distracted and miss part of the testimony.

Now, your note-taking, these instructions that I'm giving you now, you're welcome to take notes on them, if you wish. I will tell that they will be repeated -- all of these instructions will be repeated in greater detail at the end of the case.

And, additionally, a typed copy of my final instructions will be provided to you that will contain all of the law and everything that you're to follow in the case.

Now, until the trial is over, do not discuss this case with anyone, and do not permit anyone to discuss this case in your presence. This includes your family, friends, and even your fellow jurors.

The very first time you should ever discuss this case is at the end of the case when you and your fellow jurors retire to the jury room to actually begin deliberating on your verdict.

If anyone should attempt to discuss this case or to approach you concerning this case during the course of the trial, you should inform me immediately through my court staff. I do not anticipate that this

1 to find out more information about the case, the
2 parties, or the attorneys in the case.

3 For example, if you have a home computer,
4 during the trial of this case, don't go home and get on
5 your home computer and start trying to do research or
6 figuring anything out.

7 The reason for this is very important.
8 Again, you are to follow only the evidence that is
9 admitted here in court and the evidence that all of you
10 as a group hear.

11 If you were to go out and start
12 researching on the internet or some issue or some
13 witness, that would be interjecting something into the
14 case that was not admitted into evidence, that both
15 sides did not have an opportunity to hear and
16 cross-examine and that your fellow jurors did not have
17 the opportunity to hear.

18 So don't do that. If you should do that,
19 it could put in jeopardy and make -- as you can tell,
20 both sides have gone to a great deal of expense to get
21 this case to this point for y'all to decide the case
22 from the evidence.

23 And if somebody was to go off on a
24 tangent and start doing something like that, it could
25 put this whole process in jeopardy, and it would have to

1 ~~be done all over~~
2 So they've got a lot invested; you're
3 going to have a lot invested this week. So please be
4 very careful and follow my instructions to the letter.

5 Now, let me visit with you about the
6 parties and about the nature of this case. As you know,
7 this is a patent case.

8 The parties in this case are Mirror
9 Worlds, LLC, or Mirror Worlds and Mirror Worlds
10 Technology, or it will also be referred to as MWT, and
11 Apple Inc., or it will be referred to as Apple.

12 I think generally the parties will be
13 referring to each other as Mirror Worlds and Apple.
14 Mirror Worlds is the Plaintiff. Apple is the Defendant.
15 The case involves five patents. Three of the patents,
16 the '227 patent, the '313, and the '427 are owned by
17 Mirror Worlds. The fourth patent, '101, is owned by
18 Apple.

19 Excuse me. That was a typo. I said
20 there were five patents. There are four patents. There
21 are three Mirror Worlds patents and one Apple patent.
22 We will also refer to the four (sic) patents owned by
23 Mirror Worlds as the Mirror Worlds patents, and the
24 patent owned by Apple as the Apple patent.

25 Mirror Worlds contends that Apple

1 infringes its patents, that the infringement is willful
2 and that it is entitled to damages for such
3 infringement.

4 So those, again, are the three questions
5 that you're going -- three of the questions you're going
6 to be presented with at the -- at the conclusion of the
7 case: Infringement, willfulness, and damages.

8 Apple denies such infringement and
9 damages and alleges that the patents are invalid.
10 Invalidity is a defense to patent infringement. So
11 that's the fourth issue that you're going to be asked to
12 decide.

13 First is infringement. Second is
14 willfulness. Was the infringement willful, if there was
15 infringement? The third is invalidity. Has Apple met
16 its burden of proving that the patents are invalid? And
17 the fourth is damages.

18 Now, that's with regard to the Mirror
19 Worlds patents. The same thing applies to the Apple
20 patent.

21 Apple contends that Mirror Worlds
22 infringes its patent and that that infringement is
23 willful and that it is entitled to damages for such
24 infringement.

25 So with regard to the Apple patent, same

damages.

Mirror Worlds denies such infringement and denies -- and damages and alleges that the patent is invalid. So there again is the fourth issue with regard to the Apple patent, and that's the invalidity issue.

You will hear more about the patents-in-suit and the technology during the opening statements of the attorneys.

Now let me visit with you briefly about the patent system and how a patent is obtained. Some of this you saw on the video; some of it you heard about in voir dire examination.

The United States Constitution empowers the United States Government to enact patent laws and issue patents to protect inventions. The purposes -- purpose of the patent system is to help advance science and technology.

The patent system achieves this purpose by granting to the owner of a patent the right, for the life of the patent, to exclude any other person from making, using, offering for sale, or selling anywhere in the United States the invention covered by the patent.

A patent has a life for a limited number of years, which for the patents involved in this case

Once a patent does expire, the invention becomes part of what is known as the public domain, which means that anyone is free to use it, and the patent owner may no longer exclude anyone from making use of the invention claimed in the patent once the patent has expired.

However, during the term of the patent, if another person, without the patent owner's permission, makes, uses, sells, or offers to sell something that is covered by the claims of the patent then that person is said to infringe the patent.

The patent owner may enforce a patent against persons or companies believed to be infringers in a lawsuit in a federal court, such as in this case.

Everyone, however, has the right to use existing knowledge and principles. A patent cannot remove from the public the ability to use what was known or obvious before the invention was made or patent protection sought.

Thus, to be entitled to patent protection, an invention must be new, useful, and non-obvious.

To obtain a patent, the applicant must file a patent application with the United States Patent

After the applicant files a patent application, a Patent Examiner examines the application to determine whether the invention described in the patent application meets the requirements of the patent law for patentable inventions.

If the Patent Examiner concludes that the legal requirements for a patent have all been satisfied, then the Patent Examiner is said to allow the claims, and the application issues by the U.S. Patent Office as a patent.

The process, from the first filing of the patent application up to and including the issuance of the patent, is what's called patent prosecution. The record of the papers relating to the patent prosecution is referred to as the prosecution history or file history.

And this is normally letters and meetings and notes back and forth between the patent applicant and his attorney and the Patent Examiner. That's what's called the prosecution history.

Now, once the U.S. Patent Office grants a patent, that patent -- that carries with it the presumption that the patent is valid. From the issuance of a patent, it is presumed that its subject matter is

1 new, useful, and constitutes an advance that was not at
2 the time the invention was made, obvious to one of
3 ordinary skill in the art.

4 However, this presumption of the validity
5 may be rebutted at trial, and you, the finder of fact,
6 may find the patent to be invalid.

7 I'll have more to say about the defense
8 of invalidity and the elements of infringement and that
9 type of thing in a little bit, but next I want to visit
10 with you about the parts of a patent.

11 Please look in your notebook, and you'll
12 find the patents that are the subject matter of this
13 suit, and you'll see the '227 patent. If you will flip
14 to that tab, and you'll identify it by -- up at the
15 upper right-hand corner, it says patent number.

16 There should be a tab that says 227. If
17 you open that tab, you'll see in the upper right-hand
18 corner -- this is a copy of the patent, and in the upper
19 right-hand corner, it says Patent No. 6,006,227. That
20 means that that's the 6 millionth, 6,000th, 227th patent
21 issued by the United States Patent Office.

22 Right below that you see the date of the
23 patent. That's December 1, 1999. That's the date that
24 the patent issued.

25 You will also see -- on the left-hand

side, you'll see the inventors' names. And those say
Eric Freeman and David H. Gelernter.

You'll see the filing date. It says:

Filed: June 28th, 1996.

You see the assignee. The assignee was
Yale University, New Haven, Connecticut.

And then you'll see a list of references
cited. That's what's called prior art publications.
That's other patents or other publications that were
considered by the Patent Office when it was deciding
whether or not to issue this patent.

In the right-hand column, you will see a
paragraph in the lower right-hand side that says:
Abstract. This is a brief statement about the subject
matter of the invention.

On the next several pages, you'll see a
number of drawings, which appear as Figures 1 through
8B. You can flip through those. You see all the way
over through 8B. The drawings depict various aspects or
features of the invention. They are described in words
later in the patent.

The written description begins next. If
you look right past the drawings, you'll then see a lot
of just paragraph after paragraph in two columns.

And if you notice there, the columns are

2 then on the next page, Column 3 and 4 and so forth.

3 This is an easy means of reference that I want to

4 explain to you.

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5           If you look at Column 1, you'll also see
6 down the middle of each page, there are a lot of little
7 numbers, 5, 10, 15, 20, and 25. Those refer to the
8 lines on the page.

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9 So if you wanted to find what was at
10 Column 1, Line 20, you would find Column 1, look down
11 the center of the page to where the little 20 is, and
12 you'll see right there in Column 1 on Line 20 is the
13 Background of the Invention.

14 And you'll hear the expert witnesses and
15 the attorneys, during the course of the trial, when they
16 want to cite to a particular part of the patent, they
17 will say Column 1, Line 20, or Column 8, Line 16, and if
18 you have your patent open, you can flip right the where
19 they're reading from, and you can follow along.

20 Now, as you look down through these,
21 you'll see that up at the beginning of Column 1 is a
22 paragraph called Field of the Invention.

23 Then the next section, at Column 1, Line
24 20, is Background of the Invention.

25 Then Column 2, Line 10 is Summary of the

Then over in Column 3, you have a description of the drawings.

Then at the bottom of Column 3, you have a detailed description of the preferred embodiments.

And those are various ways that the -- the claimed invention can be practiced. And that continues over for a number of pages, all the way over to Column 15.

And you'll see at the beginning of Column 15 at Line 8 -- or Line 7 a little sentence there that says: What is claimed is, colon, and then No. 1, a computer system which organizes each data unit, et cetera. Then you see No. 2, No. 3 in bold print on down, all the way over to Column 16, and then it continues all the way over through Column 18.

These are what's called the claims of the patent, and I will have more to say about those right now.

The claims of a patent are a main focus of a patent case, because the claims are what define the patent owner's rights under the law; that is, the claims define what the patent owner may exclude others from doing during the term of the patent.

The claims of a patent serve two

purposes.

First, they set the boundaries of the invention covered by the patent.

Second, they provide notice to the public of what those boundaries are.

The claims of the patent are what are infringed when patent infringement occurs, because the claims define what the patent is.

Thus, when a product or a method is accused of infringing a patent, the patent claims are compared to the accused product or method to determine whether there is infringement.

So when you're deciding infringement, you take the patent claim, and you compare it to the accused invention or method. And you'll hear experts testifying about this and as to whether each element of the claim is satisfied or not satisfied.

The claims are also at issue when the validity of a patent is challenged. In reaching your determination with respect to infringement and validity, you must consider each claim separately.

Now, patent claims may exist in two forms referred to as independent claims and dependent claims. An independent claim does not refer to any other claim of the patent; in other words, it stands alone or it's

1 independent. It is not necessary to look at any other
2 claim to determine what it means.

3 For example, in the '227 patent, Claim 1
4 is an independent claim. It stands alone.

5 A dependent claim refers to at least one
6 other claim in the patent. A dependent claim includes
7 each of the limitations of the other claim or claims to
8 which it refers, as well as the additional limitations
9 recited in the dependent claim.

10 So if you have a dependent claim that
11 refers say to Claim 1, then all of the elements of
12 Claim 1 have to be satisfied, plus the elements of
13 Claim 2. It just sort of incorporates it together.

14 Therefore, to determine whether a
15 dependent claim -- what a dependent claim covers, it is
16 necessary to look at both the dependent claim and the
17 other claim or claims to which it refers.

18 For example, Claim 2 of the '227 patent
19 is a dependent claim. It's down at Column 15, Line 29.
20 And you'll notice the dependent claim says: The
21 computer system of Claim 1 wherein each timestamp is
22 selected from the group consisting of past, present, and
23 future times.

24 So you would -- to determine what a
25 dependent claim covers, you first look to Claim 1, and

1 then you look to Claim 2.

2 All right. Let me visit with you now
3 about construction of the claims.

4 While the claims define the invention,
5 sometimes there is a disagreement between the parties as
6 to what certain words or terms in the claim mean.

7 When this happens, they ask the Court to
8 interpret these terms in light of the patent as a whole.
9 This is to help resolve their disagreement and to give
10 you, the jury, guidance in applying the claims to the
11 facts of the case.

12 This happened in this case. And at
13 sometime prior to trial, a number of months ago, both
14 parties met and conferred as to what they agreed on and
15 what they didn't agree on, and what they could not agree
16 on, they then filed papers and briefings and argument
17 with me, and we had a hearing here in court, without a
18 jury, just before me, where they presented their
19 arguments.

20 Then I hand down what's called a claim
21 construction opinion where I define the meaning of the
22 terms that they have in dispute. The Court's claim
23 construction of these terms are set forth in the Claim
24 Construction Chart provided in your notebook.

25 If you'll look over past the patents,

1 there should be a tab that says: Claim Construction
2 Chart. And there you'll find the definitions for each
3 of the words that were in dispute and the meaning that I
4 have given to you. You must use these meanings when you
5 decide the issues of infringement and invalidity.

6 Everybody find the Claim Construction
7 Chart?

8 Should be under a tab that says: Claim
9 Construction Chart. Is it -- is it not? I don't have a
10 notebook in front of --

11 JUROR: Terms?

12 THE COURT: Is that correct?

13 LAW CLERK: Claim Terms.

14 THE COURT: The tab says: Claim Terms.

15 All right. And there's the chart. On the left-hand
16 side, you'll see what was in dispute; on the right-hand
17 side, what the Court's instructions was.

18 I know this may seem a bit overpowering
19 and confusing looking at the claims and now definitions
20 of the words, but let me just reassure you at the point
21 that the attorneys are going to simplify this for you.

22 They are both very well qualified, well
23 represented on both sides. They will have expert
24 witnesses that will simplify it for you. They'll have
25 claim charts. And you will -- this will make a lot more

2 So if you're feeling a little
3 overwhelmed, don't, okay?

4 I've tried a great many of these cases,
5 and I always ask the jury when it's over with, I say --
6 I just had a trial last week, and I asked them, I said:
7 How many of you felt really confident to decide this
8 case when you were first selected? I don't think hardly
9 a hand went up.

10 I said: How many of you felt confident
11 to decide the case after you had heard all of the
12 evidence? And every hand went up.

13 So -- and I see that repeatedly. So if
14 I -- if I see a -- if you're looking like a deer in the
15 headlights this morning, I'm not too concerned, and
16 nobody else is either, so -- but this will help give you
17 some context and some -- make all of this a little more
18 meaningful to you for me to go through this now and give
19 you an overview of what you're going to be seeing.

20 Now let's talk about the issues that
21 you're going to be deciding in this case. There are
22 really four questions or issues. I've been over those
23 with you. That's infringement, willfulness, damages,
24 and validity.

25 Mirror Worlds has the burden of proof on

1 the issues of infringement, willfulness, and damages for
2 its patents; and Apple has the burden of proof on the
3 issue of invalidity with regard to Mirror Worlds'
4 patents.

5 Likewise, Apple has the burden of proof
6 on the issues of infringement, willfulness, and damages
7 for its patent, and Mirror Worlds has the burden of
8 proof on the issue of invalidity for the Apple patent.

9 However, there are different burdens of
10 proof you must apply in answering these four questions.

11 In any legal action, facts must be proven
12 to you by a required standard of evidence known as the
13 burden of proof.

14 You've probably heard of the
15 beyond-a-reasonable-doubt standard that applies in
16 criminal cases, and some of you have maybe sat on
17 criminal juries. And that was the standard of evidence
18 or the burden of proof that was required of the
19 prosecution in order for you to find a verdict of guilty
20 in a criminal case, beyond a reasonable doubt.

21 Beyond a reasonable doubt is the very
22 highest burden of proof. It's not involved in this
23 case, but two other different burdens of proof are. And
24 that's what's called the clear-and-convincing-evidence
25 standard and the preponderance-of-the-evidence standard.

of proof means that you must be persuaded that what the party seeks to prove is more probably true than not true.

Put in another way, if you were to put the evidence for and against the party who must prove the fact on the opposite sides of a scale, the preponderance-of-the-evidence standard requires that the scale tip at least somewhat toward the party that has the burden of proof.

That's the preponderance-of-evidence standard.

Now, the clear-and-convincing-evidence burden of proof means that the evidence must produce in your minds a firm belief or conviction as to the matters sought to be established.

In other words, if you were to put the evidence for and against the party who must prove the fact on the opposite sides of a scale, under the clear-and-convincing-evidence standard, it requires that the scale tip more heavily toward the party who has the burden of proof.

In other words, the clear-and-convincing-evidence standard is a higher standard than the preponderance of the evidence.

In this case, Mirron Worlds has the
burden of proving infringement and damages of its
patents, and Apple has the burden of proving its
infringement and damages of its patent by the
preponderance-of-the-evidence standard.

So preponderance of the evidence applies
to infringement and to damages; however, the issues of
invalidity and willfulness require the higher standard
of clear and convincing evidence.

So infringement, damages, preponderance
of the evidence; willfulness and invalidity by clear and
convincing evidence.

Now, this just about concludes my opening
remarks. Again, as I said, don't be concerned if you
feel a little bit lost at this point.

I'll be giving you much more detailed,
written, final instructions at the end of the case and
will have all of these instructions in much greater
detail accompanied by a verdict form in writing for you
that the verdict form will ask you the very simple
questions dealing with the four issues of infringement,
willfulness, invalidity, and damages as to each patent.

By the time you get to those questions,
you will have a much greater understanding and
confidence in answering them.

have to be an expert on patent law or the field of the invention. We have very fine attorneys on both sides who will do a good job of simplifying and explaining all of this to you, and they will carry -- they will call very capable experts who will help you understand the issues and facts of this case.

I have tried many of these cases, and almost always, by the end of the case, the jury feels very comfortable in deciding the issues in the case.

Now it's time for opening statement, and I've allowed each side 30 minutes for opening statement.

Let me ask the members of the jury, does anybody need a break? We can take about a five-minute break, if you'd like to stretch your legs, use the facilities, before we start opening statements, or we can go straight into them.

Does anybody need a break?

This will apply throughout the case. Sometimes the days get long. The mornings get long. We've got a lot of testimony to cover.

I have given each side 12 hours for direct and cross-examination. So that's basically 24 hours of testimony. Hopefully, they'll give a little back to us and won't use it all, but they -- they've

1 both got a lot to cover, so they may take it all

2 So to get through this case, we're going
3 to have to work very hard, and we can, normal day, get
4 in about six hours a day. So we're going to be hitting
5 it pretty hard for the next three or four days and try
6 to get through with this case this week, if at all
7 possible.

8 So anytime during those long afternoons
9 that one of you needs to take a break, just get the
10 Court Security Officer's attention or hold up your hand
11 or -- I had a juror last week that just got up and
12 started walking out, and that's okay, too. If you've
13 got to go, you've got to go, you know.

14 So does anybody need a break before we
15 begin opening statements?

16 All right. The Court will recognize
17 counsel for the Plaintiff for purposes of --

18 MR. CARROLL: Thank you.

19 THE COURT: -- opening statement.

20 Mr. Carroll.

21 MR. CARROLL: Thank you. Your Honor, if
22 the Court please, would you give me just about a
23 five-minute warning, please, sir?

24 THE COURT: All right.

25 MR. CARROLL: Thank you.

morning.

Twenty days ago, you got picked for this job, and the Judge told you then and we told you a little bit and you've heard more today about the fact that this is a patent case.

Now, I want to show you four little cartoons that I think will help you focus on what at least I think are going to be important issues during this lawsuit.

So can we have the lights down a little bit, please?

Perfect.

All right, James. Put up No. 1.

VIDEO TECH: They have the projector off.

MR. CARROLL: Pardon?

VIDEO TECH: They have the projector off.

COURTROOM DEPUTY: Judge, I hit the wrong button.

MR. CARROLL: Ms. Ferguson hit the wrong button. You'll have to reboot. We won't take your time off her time.

How long does that take, Ms. Ferguson?

COURTROOM DEPUTY: A couple of minutes.

THE COURT: All right. Let's take a

their legs, and we'll come back; and we'll be all booted
up. Take about five-minute recess.

COURT SECURITY OFFICER: All rise.

THE COURT: See, I was wanting a recess
all along.

(Jury out.)

(Recess.)

COURT SECURITY OFFICER: All rise for the
jury.

(Jury in.)

COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated.

All right. Mr. Carroll, we begin anew.

MR. CARROLL: Thank you, Your Honor.

Good morning again.

James, can we have No. 1?

All right. Twenty days ago, you heard a
little bit about patents. The Judge told you a little
bit about patents this morning. You'll hear a lot about
patents during the next week.

And the purpose of this slide -- if you
can see it up at the top -- patents are property, just -
like my little farmer's plot of land up there. And just
like any property, the owners of a patent have the

1 right, under the law, to put up a no trespassing sign,
2 just like you might have a no trespassing sign in your
3 place out -- or wherever you live.

4 Now, what does that mean?

5 That means you alone as the owner have
6 the right to determine whether you let somebody use your
7 place. And that doesn't matter whether you're using it
8 or not, and I want you to remember that, because that's
9 going to be a real big flap in this lawsuit.

10 And that is, Apple is going to want to
11 talk about the use that David Gelernter here and his
12 little company made of the patents, not what they used
13 them for. And I'll explain to you in a minute why
14 that's important.

15 Let's go to the next slide.

16 The unauthorized use of any property is
17 called a trespass, right? Somebody trespasses on your
18 place. Call the sheriff, right?

19 In patent law, there is no patent police;
20 there is no patent sheriff. We can't call anybody and
21 say: Apple is trespassing. Will you come arrest them?
22 We come to court. You are our patent police. The
23 Patent Office can't do it; only the jury in the United
24 States Federal Courthouse, just like you-all.

25 Now, what does it mean to infringe a

2 Here on my little cartoon, you see that
3 the oil company is fixing to come out and drill on my
4 farmer's place, okay?

5 And -- and let's go to the next slide.

6 And he catches them, and he catches them
7 after they have drilled and after they have made a well.

8 Now, what does that mean?

9 That means that for the first time, he is
10 calling them to pay up for what they have used his
11 property for.

12 Now, let me tell you right now where
13 we're going to have a big fight in this lawsuit, and
14 this is the perfect example.

15 You're going to find out that every day
16 that you and I are in this courtroom, Apple makes 50
17 million American dollars from using our technology. \$50
18 million. If we're here five days, that will be a
19 quarter of a billion dollars they will make while we're
20 in here trying to protect our claim, prosecute our
21 trespass.

22 Just like that oil well, if Exxon drilled
23 that oil well and they hit a gusher, the law says that
24 they have to pay for that trespass based upon how much
25 oil they use out from under that man's place.

Apple doesn't want it that way. They're going to try to hide from you the whole trial how much they make, including this \$50 million a day. And they're going to want to talk about how much the farmer may have paid his brother-in-law years ago for that place.

The law says, and Judge Davis, I think, will tell you, that the appropriate measure of damage is how much they use the patented technology.

So watch for that, because that's going to be a smoke screen. They don't want to talk about that \$50 million they're making right now.

Let's go to the last one.

So what has to happen is, the law says that we have to play-like; we have to pretend. You remember when your kids were little and they had play-like. We play like that Apple did what they have not done and still won't do, and that is, sit down and fess up and admit that they used our patents, admit that the patents were valid. They're not even saying that. And then figure out what they would have settled up for.

Just like in my slide with the oil company, the farmer catches them. What does he want? He wants to know, number one, how much oil did you find? Number two, what would be a fair price -- a share with

1 me?
2 And under the law in this case, in these
3 patent cases, the law says that the patentee -- that's
4 us -- and Apple, the infringer, have this sit-down. And
5 guess what? Apple's cards are face up on the table.
6 They can't hide anything. They have to tell us the
7 straight-up. They have to tell us how much oil they
8 found, right?

9 So we know what was fairly ours. And
10 then that is figured on the basis of a percentage of
11 what they used, what they made.

12 They have a patent -- or damage man who's
13 going to talk to you. He's not even going to go through
14 that formula. He's not even going to do what the law
15 says that he has to do.

16 Why?

17 Again, they're trying to hide from you
18 how much money they made from our patents.

19 So that's what the case is going to be
20 about from the standpoint of damages. And I'll just say
21 this one thing about our claim. It's for a ton of
22 money, but it's based upon the multiple tons of money
23 that they have made with this man right here's (sic)
24 ideas, David Gelernter.

25 We are asking for less than 1 percent of

1 what they made

2 Think about it this way. Some of you on
3 the jury have experience in the schoolhouse. You catch
4 some kid using somebody else's work. Typically, what do
5 they get?

6 A zero. In this case, we caught Apple.
7 They still get a 99. Think about that.

8 Okay. Let's go to what we think at least
9 the case is about, and let me tell you what I've done.
10 I am going to put up what I think is a pretty good
11 roadmap of the case.

12 First of all, who is David Gelernter?

13 David stand up, please.

14 And I mispronounce the poor man's name
15 every time. It's Gelernter.

16 So if you hear me say it otherwise,
17 David, I'm sorry.

18 Jane, where are you? Would you stand up?

19 This is Jane Gelernter. You met them
20 both 20 days ago.

21 Thank you.

22 They're now from Connecticut where they
23 live. They've got grown kids, who, at least as of
24 today, were out of the house.

25 Right, David?

2 MR. CARROLL: So they're here, and you're
3 going to hear a lot about who he is, what did he invent,
4 what was Apple's interest in what he invented and how we
5 know that, how is Apple infringing or using his patent
6 without his permission, and what should they pay.

7 What I suggest you watch for are these
8 very two important points right here (indicates), and
9 it's going to make sense to you when you get into the
10 case.

11 Number one, what was Apple saying about
12 the importance of this man's invention before we sued
13 them? What were they saying about the importance of
14 this man's invention before we sued them?

15 Then, look at what they're saying today.
16 And you're going to be able to tell a whole lot about
17 who to believe in this case.

18 And let me show what you I'm talking
19 about.

20 Let's go to -- well, let me just show it
21 to you right now. And I am going to get a little bit
22 ahead, and I am going to catch up. Let me show you this
23 poster right here.

24 You're going to find out that Apple got
25 very excited about David Gelernter's patents, because

1 they were very highly well-publicized. It was a big
2 deal. And the very top man at Apple, a guy you will
3 hear a whole lot about, named Steve Jobs, and that's
4 J-O-B-S, the man himself. This is not some underling.
5 This is Steve Jobs, the top banana at Apple.

6 He sends an e-mail to a whole bunch of
7 people that says: Please check out this software -- and
8 it's up there on the screen -- ASAP. It may be
9 something for our future, and we may want to secure a
10 license.

11 Remember that word license, because
12 that's what you get when you get permission from a
13 patent owner to use that patent owner's property.

14 Now, let me show you what I was talking
15 about in terms of watching out for what they say, the
16 before and after.

17 That e-mail from Mr. Jobs led to a
18 meeting between us and them. We sat down and told them
19 everything we knew about our invention. They seemed
20 excited, but then they backed up and said: Oh, well,
21 forget about it. We're not interested after all.

22 But look at what they did after they said
23 they were not interested. Look at all of the times they
24 were looking at our stuff through our website, all of
25 the times they were conferring about how important our

1 stuff was, after they said they weren't interested,

2 culminating in a top-secret meeting of Apple people, a

3 top-secret meeting where the mention was -- look up

4 there -- an off-site meeting -- and the reference was --

5 David Gelernter, Yale professor, new ways of finding

6 information. New ways.

7 Now, what are they going to tell you?

8 Mr. Randall is going to stand up here in about 15

9 minutes and tell you that what we invented was old

10 stuff. That sure wasn't the song they were singing

11 there. New ways.

12 That secret meeting was what led to the

13 development of this (indicates), which accounts for some

14 of that \$50 million they will make today. And it led to

15 the invention of this (indicates), which will also make

16 up some of that \$50 million they will make today. And

17 it's based on this man's ideas. And we want to be paid

18 for it.

19 Let's go to slide -- that first slide,

20 James, about Dr. Gelernter.

21 Okay. Real quickly, who is David

22 Gelernter?

23 Well, I told you a little bit 20 days ago

24 that he's an author. Sure enough, he wrote this book

25 back in '91. It's a great book. I have read it and I

can understand it, and I'm not a technical guy.

Because what it tells you is exactly what happened, and that is, one day, today, computers can become a mirror anywhere in the world we want to be. We can see houses; we can see Google Earth's where we live, if we know how to turn it on, all those kinds of things. And that was the first big attention that David Gelernter got.

Let's go to the next one, James.

Now, up here, I said that it brought a lot of attention about Dr. Gelernter and his ideas. New York Times wrote a big article about him. It also got him targeted by a terrorist called the Unabomber.

And in 1993, this Unabomber attempted to murder this man right here. He sent him a bomb in a box, and he opened it up in his office, and it blew up and he almost died. He almost bled to death.

And let me just say this: 20 days ago when I asked you about this during the voir dire part of the case, Mr. Randall over here got up and he referred to that. And you may remember this; we sure do. He referred to that as an accident.

Now, I don't know how attempted murder becomes an accident, but I think you'll see that that's the limit -- or the degree to which Apple is going to

that they say was an accident. It was an attempted murder. And he bears the scars of that today.

But you know what? It led to a good thing. While he was convalescing, he came up with these three patents, the very three patents that we're in court about today, the very three patents that make Apple \$50 million a day.

Let's go to the next one, James.

And, again, I've shown you -- this is this fellow, Steve Jobs, on the right. That's not him on the left. That's Steve Jobs. And he is the big man at Apple, and he's the guy that wrote those e-mails.

And you know what? Pretty interesting, if I can find the deal.

He wrote two e-mails. I showed you the one that led to the meeting. He wrote one after the meeting, after they had told us they weren't interested, and he said: It might be worth a look. That's the top banana at Apple.

You're going to hear testimony from a guy who went to the meeting, because Mr. Jobs sent him, that he had never seen that before, that he had never before or since seen a situation like that where the top guy said go check this out.

1 Okay. Let's go to the next one.

2 So Apple wants to meet, and we have the
3 meeting. There's a guy right there named Mike Satow.
4 Mike is going to testify for you as to what happened at
5 the meeting as to who said what. Apple was excited; we
6 were excited. We wanted to partner with them.

7 Let's go to the next one.

8 They weren't interested, and I showed you
9 that one.

10 Let's go to the next one.

11 Showed you that one.

12 Let's go to the next one.

13 Oh, I'm sorry. Let's go back one, James.

14 This is interesting. You see this front
15 man? All these people at Apple were involved in these
16 e-mail traffics about Gelernter's ideas about his
17 patents and how important it is.

18 Guess what? They've all taken dummy
19 pills. Nobody can remember a thing. So think about
20 that when you're trying to decide who to believe.

21 Let's go to the next one.

22 Here's the infringement. We've got a
23 Ph.D. trained at very important universities on both
24 coasts named John Levy.

25 John, where are you? Would you stand up?

for Apple. He was there when it was a little company,
couple of hundred people.

Thank you, John.

He's going to explain to you why our
three patents are infringed by these three products.

And let me tell you how important those
products are. Two of them -- two of the three are
mentioned on this box that they make 50 million bucks a
day for.

Okay. Let's go to the next one.

And I told you Apple makes 7 -- has made
\$72 billion. \$72 billion using our technology. And,
again, they will make a quarter of a billion while we
are sitting here in this courtroom trying to get justice
from you-all.

Let's go to the next one.

Now, here's going to be what you hear
from Apple. They're going to say, oh, you know what?
That might be new and that might be cool and all that,
but, you know, we're happy using the old stuff.

That's not what this fellow Jobs says.

Turn on that sound, if you would, James.

Okay. We can't get it.

Here's what he says: He says -- he says

1 that it is new, pioneering and revolutionary, and that
2 these features are changing the way people will use a
3 computer. That's what he tells the world. But they're
4 going to tell you that they are back using their old
5 way.

6 Here's the point -- here's the point.

7 Let's go down to the bottom.

8 Apple, in fact -- John Levy is going to
9 tell you -- uses our new ideas. They may still have a
10 piece of the old, but the Judge is going to tell you
11 that that doesn't protect them from infringement.

12 That doesn't protect them from
13 infringement so long as our ideas are in their product.
14 They can put bells and whistles on it, if they want to;
15 but as long as it's our core ideas, they have to pay.

16 Let's go to the next one.

17 Now, this is the issue that you're going
18 to hear most about from Apple, and I want you to think
19 about this. Apple says we don't do it. We don't do
20 what you're accusing us of doing, but then they're going
21 to spend a whole lot of time trying to kill our patents
22 and tell you that the Patent Office made a mistake and
23 that what we invented was not new, despite all that
24 evidence you're going to see said.

25 Now, think about it while you're

1 listening to Apple's attempt to kill our patent. If
2 they are not doing it, why are they afraid of our
3 patents? If they're not doing it, why do they want to
4 kill our patents? Think about it.

5 One of the things -- lift out -- lift out
6 that middle bullet on the bottom.

7 You're going to hear that the Gelernter
8 patents have been cited more than 115 times by other
9 inventors. 115 times people have cited his patents as
10 being important, other inventors, the Patent Office.

11 Next bullet.

12 I'm sorry. The top bullet.

13 You're going to find that there is not
14 one piece of paper that Apple can lay its hands on
15 during the entire time they were looking at Gelernter's
16 patents that say what they're telling you in the
17 courtroom, and that is that these patents are old news;
18 they are no good.

19 Instead, everything that you will see
20 that they were talking about at the time is just the
21 opposite. This is the guy at the meeting.

22 James, put this up on the board.
23 This is the guy at the meeting that knew, clearly
24 knew -- this is known at the secret meeting -- new ways
25 of finding information. Killer feature. We don't want

1 to miss the boat

2 And yet today, when we caught them,
3 they're singing a different song. But you think about
4 it. They cannot run from those documents.

5 Okay. Let's go to the next one.

6 Let's go to the next one.

7 Okay. And I've gone through that.

8 Let's go to the next one.

9 Now, this is the last thing I want to
10 talk to you before I talk to you a little bit more about
11 the damages.

12 They have sued us back. We sued them,
13 and then they said, well, we're going to sue you. And
14 they did, and they sued us over a piece of technology
15 that Steve Jobs says is old hat, and that's this Mander
16 Piles patents. John says it's not especially practical.

17 I want you to hear me on this very
18 clearly. They are so burned by what they say we did
19 with this Mander's patent that they're not even going to
20 bring you a damage calculation. They're not. And they
21 haven't even bothered to bring a witness to tell you how
22 badly they are hurt, because they're not.

23 This is a smoke screen to try and divert
24 your attention from the real infringement that's making
25 them \$50 million today.

they never, ever, ever got hurt, even if we did infringe, by this Piles patent. And when you sit down and answer those questions that the Judge is going to have you answer on that counterclaim, you're going to have to answer for damages: We don't know, because they didn't care enough about it to even bring you a witness. You think about that. Why are they trying to confuse you with that counterclaim?

Again, they're trying to run from the extent of money they have made with this man's ideas.

Okay. Let's go to the next one.

Now, this is what I call common sense in the case. These are the three Apple bigshots, all of whom know about his patents, all of whom were interested in his patents, none of whom are going to bother to come to Tyler, Texas, to deal with this problem. None of them.

Let's go to the next one.

This is a shot that shows you kind of the complete circle, 1991, David Gelernter writes about Mirror Worlds. Turns out gets the attention of Steve Jobs, and really and truly, their situations do mirror one another. Jobs knows then and he knows now how important these ideas are.

very products that will make Apple \$50 million today.

Let's go to the next one.

So what do we want?

We want a chance to explain to you, and we're going to do that this morning, with David Gelernter taking the stand, how he came up with this invention and who he is.

You're going to find out that he was studying at the Jewish seminary. Before he decided to be a computer scientist, he was a Bible student. He was going to be a rabbi. And then he decided he couldn't raise his family on what a preacher gets paid.

So he went into the computer world, and you're going to hear him talk about how hard he worked on these ideas, how important they were, how hard he tried to get the scientific community to appreciate what he had done, and they did. And then how hard he and his little company worked trying to get some big boy to partner with him, and they didn't.

THE COURT: Mr. Carroll, you have about five minutes.

MR. CARROLL: Thank you, Your Honor.

And the reason they didn't partner is they decided to take the whole apple for themselves.

1 All he wanted was a little bite, but instead they took
2 the whole thing. Didn't even give us the core.

3 So what has Apple received?

4 Billions and billions and billions of
5 dollars.

6 What have we got? What the little boy
7 shot at?

8 Zero.

9 And what do we want?

10 We want a reasonable royalty.

11 Now, let me tell what you a reasonable
12 royalty is.

13 Is Walt Bratic here?

14 Mr. Bratic, stand up.

15 This is Walt Bratic. Walt is a certified
16 public accountant down in Houston. He's done these
17 cases before. He's going to sit on that witness stand
18 and tell you everything you want to know and then some,
19 about how Apple has made and will make and continues to
20 make all this money with our man's ideas. And then
21 he'll tell you how he came up with that reasonable
22 royalty.

23 And guess what? Guess what? That's
24 about two weeks' worth of infringing sales.

25 They can pay us, if you make them, what we're owed. And

1 is about 13 days they'll be done with us. About 13
2 days.

3 So we were -- we'll ask you, after you
4 hear the testimony, to give us a verdict: Yes, Apple
5 infringes. Yes, it's willful. That means there wasn't
6 any accident. And you'll see that.

7 No, the Gelernter patents are not
8 invalid. They're just as good as the Patent Office said
9 they were when they were issued. And they are just as
10 good and exciting as all your people said they were when
11 they were looking at them.

12 And the damage -- the reasonable royalty
13 is that number (indicates).
14 And then on their counterclaim, tell them no. Tell them
15 no. We can see a smoke screen when we see one. Give
16 them no infringement, no invalidity, no damages, because
17 there won't be any.

18 This is our day in court. We've been
19 waiting a long time for it. We're going to do our best
20 to get the case on to you in a way that we think will
21 maximize your time and ours.

22 Thank you for helping us out. Thank you
23 for your consideration.

24 Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Carroll.

2 MR. RANDALL: May it please the Court.

3 My name is Jeff Randall, and I represent
4 Apple. And with me are my partners, Christian Platt and
5 Allan Soobert. And also with me is Apple's corporate
6 representative, Mr. Bud Tribble.

7 First, I'd like to tell you just a little
8 bit about Apple, and then I want to get to the core
9 issues in this case. And the core issues in this case
10 are not damages, and they're not whether we were
11 aware -- Apple was aware of Mirror Worlds.

12 The core issues in this case are whether
13 there's any evidence on infringement, and I didn't hear
14 much about that, and whether those patents are invalid.
15 Those are the real core issues in this case, and I'll
16 get to that in just one moment.

17 First of all, let me tell you a little
18 bit about Apple. Apple is, no doubt about it, one of
19 the most successful and respected technology companies
20 in the world. Apple achieved its success over the years
21 through a long history of hard work and innovation and
22 an unwavering commitment to making the best products for
23 individual consumers.

24 While IBM and other big companies were
25 focused on big companies, Apple has always been focused

on the individual consumer and providing the best
products to those consumers.

Apple started in 1970 in a garage in
Silicon Valley. By 1985, Apple was widely recognized as
an American success story.

Would you please show Slide 1, please?

This is an article from The New York
Times, September 19, 1985, and it quotes President
Reagan.

Can you please play Clip 2? This is
President Reagan from May 28th, 1985 address.

(Video clip played.)

MR. RANDALL: You're going to hear from
Apple, and there was a suggestion about employees
coming. You're going to hear from Apple's key
executives, Apple's employees, who have worked very hard
to develop not only all the features that have made
Apple a success but also those core features that are at
issue in this case.

And you're going to hear from a number of
those Apple witnesses, and they're going to tell you how
they, along with the 37,000 other employees at Apple,
have earned their success by developing great products.

They've developed computers; they've
developed their own software. The MAC OS, which is the

operating system that runs the software, runs the
computers, music products, mobile phones. All of

Apple's products work together, and it's one package.

And they are the only company that does that, and they
do it better than any other company. And there's no
question about that either.

Now, let me address a few of these
issues. First of all, I will deal with this right
upfront.

The issue in this case, and I think that
this is one of their main contentions, was, did Apple
know about Mirror Worlds?

Well, sure, they did. It's not in
dispute. And I think Mr. Carroll mentioned, oh, Mirror
Worlds has got all this attention. Mr. Gelernter got
all this attention.

Well, he did. He did.

And at the time, over the last several
decades, there's only been three operating systems that
run computers, three main operating systems. Microsoft
has Windows; been very successful. They've made a lot
of money. Sun had UNIX, and Apple has its operating
system. Three main operating systems that run the
personal computers in the world.

And the press and Mirror Worlds and

1 Dr. Gelenter all suggested that he had come up with a
2 whole new operating system, a whole new way of
3 organizing documents, a whole new way of running
4 computers.

5 Now, there's no question that Apple as a
6 leading technology company, along with other companies,
7 keep track of technology. And if someone comes along
8 and says we have a whole new way of running and
9 operating computers, you don't have to just look at the
10 three -- UNIX, Apple, and Microsoft -- there's a new
11 player.

12 Well, of course, that is -- and it's not
13 going to be surprising that that is going to get some
14 attention from Apple and other companies.

15 But what the evidence is going to show in
16 this case is that when Apple did take a look -- and
17 there was a suggestion that there was a meeting where
18 licensing was discussed and the patents were discussed.

19 That is not true. This company, Mirror
20 Worlds, never accused Apple of infringement. They never
21 suggested that they needed to take a license. They
22 never suggested -- there was never any discussion about
23 taking a license, paying a royalty, any of that.

24 What happened was Mirror Worlds wanted to
25 sell software to Apple as a customer. Apple saw all

1 this press and said maybe we should take a look at what
2 this guy has, his software. And Steve Jobs suggested
3 maybe we should take a look. And if we need a license,
4 take a license; maybe we should secure a license.

5 That doesn't sound like a thief, does it?
6 It sounds like someone saying, hey, take a look at this.
7 Let's see what they've got.

8 Well, Apple did take a look. That is the
9 responsible thing to do as a company. Apple took a look
10 at what Mirror Worlds had; and Apple, along with
11 everybody else that saw what Mirror Worlds had, walked
12 away and said you don't have a whole new operating
13 system. You don't have software that changes the world,
14 that changes or revolutionizes things that is a new
15 operating system that now competes with all these other
16 operating systems.

17 It wasn't new. And the evidence will
18 show that.

19 The evidence will show that in a
20 computer -- and one of the issues that Dr. Gelernter was
21 trying to solve was in a computer, one of the issues is,
22 how do you find the information in that computer?

23 I mean, really. You know, if all these
24 documents are loaded into the computer, how do you find
25 it?

And you find it by indexing it, right?
When the information goes into the computer, you do an
index and then you can find it, just like a library,
right?

I mean, if you think about it, it's no
different than a library index. And so, for instance,
when Apple took a look at the software that Mirror
Worlds had, it was an application that allowed for
indexing and searching of documents. And the indexing
and searching of documents, their new operating system,
they purchased it from another company. They didn't
even develop it themselves. The other company was
called Verity.

So they had gone out, taken this other
software off the shelf, bought it, put it into their
product, and said this is our new revolutionary product.
And that's why -- when Mr. Carroll told you about the
sales, that's why this great new revolutionary software
only sold 50,000 dollars' worth of revenue. That's it.
That's the whole company.

That's Mr. Gelernter's idea. That's his
software. That's everything.

What happened was, over the life of that,
they sold 50,000 dollars' worth of software. Now that
doesn't sound like a whole new operating system. That

1 doesn't sound like much.

2 And so when Apple looked at it, which it
3 did, and when other companies looked at it, the other
4 companies didn't buy it. Apple didn't buy it. Apple
5 didn't say we don't need that.

6 What Apple told them upfront was -- and
7 you're going to hear evidence on this -- well, we've now
8 taken a look at this. You saw all those e-mails. A lot
9 of those were just setting up a meeting, right?

10 And there was a meeting, a telephone
11 conference. No doubt about it. And Apple looked at
12 what they had and said, you know, we're going to use our
13 own indexing and search technology. That's what we're
14 going to use. That's not -- that's what we'll do.

15 We'll continue on with our own. And
16 that's exactly what they did.

17 Now, I want to spend the remaining
18 portion of my time on the key issues in this case, and I
19 think that Mr. Carroll put the cart before the horse
20 when he starts talking about damages for most of his
21 opening.

22 They have to prove infringement. They
23 have to say that we used what's in those patents; and
24 the truth is, we don't. We have a fundamentally
25 different system.

Can you pull up 16, please?

All right. On the right is their patent -- is the diagram from their patent. They organize all the documents, all of them, everything in that computer in one big, time-ordered, chronological stream, okay? That's their -- that's their concept.

Apple uses the traditional way, the folder system. So Apple has folders. I don't know if you can see this, because it's a little difficult. But they have main folders, and then they have subfolders, and then they have sub-subfolders.

That's how Apple does it, and Apple has done it that way all along. And Microsoft Windows does it, and UNIX does it. That's how Apple organizes things.

How does Apple find things?

Apple uses its own indexing and search software to index and search for documents on its system.

Now, can you pull up 6, please?

Now, this is very -- this is a library. It's an analogy to show you and demonstrate to you what these patents are about.

This is a -- and you see a reference here; you see recreation here; and you see fiction here.

1 And there are subcategories. Mystery, romance, and so
2 forth.

3 This is how Apple organizes its data in
4 its system, by categories or folders and subfolders. It
5 always has.

6 Go to 7.

7 Now, Apple, like other companies,
8 indexed. So when a book or when a document -- when a
9 document or a piece of data comes into a computer, the
10 computer has to keep track of it, index it, right?

11 When a book comes into a library, you
12 have to index it. And you index it, and you say where
13 are we going to put it? We're going to put it in
14 History under American. So History and American
15 History, that's where we'll put it.

16 And that's how Apple organizes things.
17 They don't do it by date. They do it by logical subject
18 matter folders. They always have.

19 Let's go to -- now, if you think about
20 it, how do you find the books in this -- in this
21 library, right?

22 You're going to find the books by looking
23 at an index, figuring out where it is. Oh, that book
24 right there is under History, under American History,
25 and you're going to go find it. You're going to look at

1 the index, and then you're going to go search for it.
2 That's how computers operate. That's how they always
3 have operated.

4 Now, there's another way to do it, right?
5 You can take all those books off the shelf, and you can
6 say we're not going to organize them in a logical way,
7 all right? We're going to organize them in a
8 chronological way. We'll put them all in one stream,
9 just line them up chronologically. That's how we'll do
10 it, irrespective of what subject matter the book is,
11 okay?

12 That's what David Gelernter said.

13 So let's go to -- go one more. Go to 10.
14 That's his system of organizing them. Put them all in a
15 stream, and they're all based on time, okay? Much
16 different, fundamentally different.

17 Now, there are certain requirements in
18 these patents, and you heard the Judge in the
19 pre-instructions say that each element of each of those
20 claims at the back of those patents have to be
21 satisfied.

22 There are certain fundamental elements of
23 that system that you have to have in that system and
24 that the claims, the inventions of Dr. Gelernter's
25 patent, require.

Apple simply doesn't do it that way.
Apple has a fundamentally different way of doing things,
of organizing data on a computer. And because it has a
fundamentally different way of doing it, it doesn't
satisfy all the specific requirements of these claims.

Let's go to Slide 15.

All right. One of the requirements in
the claims is that there's a stream. I just showed you
that stream, right? This time-ordered sequence of
documents or books in a library, right? All strung
together in time.

And the Court's going to instruct you
that this stream means a time-ordered sequence of
documents that function as a diary of a person or
entity's electronic life.

Do you see that?

So it's a diary.

And then in the patent, they discuss the
same thing: Stream, according to the present invention,
is a time-ordered sequence of documents that function as
a diary.

Let's go to 11.

And there you go. This is the library
example, and these are the index cards. And down here
shows timestamp for date received, right?

1 You have to have a timestamp saying when
2 did this -- when did this -- when was this book donated
3 to the library? Because you're creating a diary for the
4 library. When -- who donated that book? When did it
5 come in the library?

6 Date received. There's got to be a date
7 and a timestamp that uniquely identifies that book and
8 places it in the correct order of when it was received.

9 Now, frankly, irrespective of when the
10 book was written, but when was that received by the
11 computer, or when was it received by the library, and
12 put in it that order, right?

13 It has to have that timestamp.

14 Let's go to 9.

15 Apple does things fundamentally
16 differently. They don't put them in chronological
17 order. They put them -- these books -- as they get
18 donated to the library, they put them in a -- in a
19 logical folder system, and always have.

20 Now, let's go to Slide 5.

21 There was a suggestion that Apple does
22 things the old way. Of course, they do. Apple's been
23 in business since 1970. They have developed a whole
24 host of products, and they have been -- they have
25 constantly, as has everyone else in the industry,

1 including Google improved their indexing and searching
2 for information.

3 And frankly, in the technology world,
4 everybody has gotten better at it. Apple has, too.
5 Apple has engaged in a long history of improving its
6 search -- its indexing of information and its search for
7 that information.

8 And there were comments earlier about
9 what Mr. Jobs said. What they didn't show you was what
10 he said in 2004 at a developers' conference.

11 Can you play Clip 7?

12 And by the way, everybody in the industry
13 understands that there are lots of folders and lots of
14 documents on computer systems, and you've got to get
15 better at indexing that information and searching for
16 it. Everybody understands that.

17 In fact, we're going to play evidence and
18 there's going to be evidence in this case that's going
19 to suggest that people knew that back in 1980, 16 years
20 before Dr. Gelernter filed his patent. Back in 1980 at
21 MIT and others, everybody knew this. And you're going
22 to hear a number of people testify about that.

23 Can you play Clip 7?

24 (Video played.)

25 MR. RANDALL: All right. Now, I'm going

1 to go through some additional points

2 Slide 19, I'm going to talk to you about
3 the timestamp. Can you --

4 Slide 19, what that shows are files in
5 the Apple system all with the exact same date and time,
6 right?

7 And that's because in today's society
8 when you receive a CD and when you put a compact disk
9 with lots of files on it, maybe photos or something, and
10 you put in it your computer, the computer lifts it up,
11 and the Apple computer just gives it a date, right?

12 When an e-mail comes across to Apple and
13 there's lots and lots of attachments and those
14 attachments are loaded into your computer, they get the
15 same date. Apple does not have, nor does it apply, nor
16 is it concerned with applying a unique date and time to
17 each document and thing in its computer system.

18 And why is that important to their
19 invention, Dr. Gelernter's?

20 Because you have to put in it order,
21 right? You have to put in it sequence. You have to put
22 it in a stream.

23 Apple doesn't care about the stream.
24 They put it in folders, so it doesn't really matter if
25 there's a host of documents and other items in the

2 Let's go to Slide 20.

3 This is another one of the requirements
4 of these claims, that this stack, this stream -- this is
5 the Mirror Worlds' stream over here on the right from
6 the patent. That stream, they say in the -- in the
7 invention, they say that's a receding, foreshortened
8 stack, right? That's what they say it is.

9 What did they tell the Patent Office?

10 When the Patent Office came up with this
11 prior art, you see that? Sure looks similar, doesn't
12 it? Looks nearly identical.

13 But they said, oh, no, no. This
14 Cowart -- orthogonal view of windows; that is, the
15 windows do not get smaller. See, they say they don't
16 get smaller. And they say this is an important
17 distinction. It highlights a key aspect of the present
18 invention.

19 So they're saying that's a key aspect
20 that it doesn't get smaller.

21 Okay. Let's go to 21.

22 This is what they accuse in Apple -- this
23 is the only visual display that they say is a receding,
24 foreshortened stack. Receding, goes back onto the
25 screen. Foreshortened, it gets smaller. They said

1 that's a key element

2 This doesn't even look like their --
3 their invention. And compare and contrast. Use your
4 common sense. They said to the Patent Office that that
5 Cowart reference, that stack of documents, oh, that's
6 not our invention. This is a key, key point, and that's
7 not our invention.

8 Well, that's not the invention. This
9 certainly isn't. And you're going to hear -- you saw
10 the diagram that Mr. Carroll put up with the hood
11 opening and he said, no, they don't want to look under
12 the hood.

13 Apple let Mr. Levy and his colleague look
14 at the source code, which is the underlying code that
15 runs all of our computers, have access to that code for
16 90 days. Their experts sat there and looked under the
17 hood for 90 days.

18 And what they see is this cover-flow
19 presentation, visual presentation, of like our albums in
20 music. It doesn't recede into the screen. It's one
21 plane. It goes straight across. It doesn't recede back
22 into the screen, number one.

23 Number two, it's not foreshortened. Look
24 at these lines. All of those displays are all the exact
25 same height. It doesn't get smaller as it goes back,

1 and it doesn't recede back into the screen.

2 Apple simply doesn't infringe. There's
3 no question about that.

4 Now, let's go to invalidity. They said,
5 well, why do they want to kill these patents? Why are
6 they concerned?

7 You know why? Because they sued us.
8 They sued us, and they brought these patents out. And
9 there are two issues. And I feel very, very confident
10 that you're going to say at the end of this case, when
11 you see all the evidence, number one, Apple doesn't
12 infringe for a number of reasons. They have a
13 fundamentally different system and different concepts,
14 and they don't satisfy those requirements.

15 Number two is that these claims are
16 invalid, okay? The idea of putting all the documents in
17 a computer system in a chronological stream is not
18 something that's new.

19 Let's go to 25.

20 Now, you're going to hear from the Judge.
21 He's going to instruct you that a black-letter rule in
22 patent law, okay? Black and white, is if your patent --
23 if the inventions that you claim to be your inventions,
24 if they were publicly disclosed by anyone, including the
25 folks at Yale and working with Dr. Gelernter, it doesn't

2 If they were publicly disclosed more than
3 a year before they filed the patent, which was June of
4 '96 -- so we'll go back to June of '95. That's a year
5 before they ever filed for their patent application.

6 If their inventions were publicly
7 available and disclosed prior to June of '95, they're
8 invalid, okay?

9 So we're going to put on evidence, and
10 we're going to present evidence from witnesses that
11 developed these systems more than a year before
12 Dr. Gelernter.

13 And you know what? The Patent Office
14 didn't have them. The Patent Office never considered
15 these references. They never considered the testimony
16 of these individuals who we're going to show you, and
17 they're going to testify here today -- in this trial.
18 They never showed you the references. They never showed
19 you the videos.

20 That information was never provided to
21 the Patent Office, and the Patent Office didn't consider
22 it.

23 So how could the Patent Office possibly
24 say that Dr. Gelernter and his colleagues at Yale were
25 the first ones to develop these concepts, when they

1 didn't have all these other witnesses and prior art
2 before them?

3 They didn't consider it; they never did.
4 And you folks are the only ones that can do that.
5 That's why we're asking you, and we're going to present
6 this evidence to you and show you that this was done
7 well before.

8 Here we go right here. Look at that.
9 Doesn't that stream of documents look very familiar?
10 It's Figure 1 from the patent. It looks just like it,
11 doesn't it?

12 This was 1979 at MIT.

13 1979, 17 years before Dr. Gelernter?
14 17 years. And that's at MIT.

15 And you've got MEMOIRS. MEMOIRS is a --
16 is a time-ordered sequence, a diary of everything in a
17 computer, and you're going to hear from Professor
18 Lansdale on that.

19 Why don't we play -- I'm going to show
20 you a video clip of Apple's own work, okay? The Piles
21 System that we think that they infringed, I'm going to
22 show you a short little clip on that.

23 Can you play Clip 11?

24 (Video clip played.)

25 MR. RANDALL: Stop it.

than four years before he filed his patent application.

All right. Go ahead. And this is --
you're going to hear from her in this trial, and she's
going to testify.

Go ahead.

(Video clip played.)

MR. RANDALL: Okay. There are a lot of
things here --

THE COURT: You have about five minutes
left, Mr. Randall.

MR. RANDALL: Thank you, Your Honor.

A lot of issues here that invalidate
these patents. You have a stack of documents, date
ordered. You can order them by color as well. They get
darker at the bottom, and all of that will be explained
to you not only by the Apple employees but also by the
expert.

Can you show Clip 12, please?

And this is -- this is, by the way, other
work by Dr. Lucas at MAYA, and you're going to see and
hear from him as well.

Can you play this clip?

(Video playing.)

(Video stopped.)

before the work by Dr. Gelernter, and it shows a whole range of documents. It shows them going back into the depth or back into the stream, receding back, organized by date, sorting by substreams and so forth. It invalidates the patent.

Now, you're going to hear about a host of other issues in this case, about these patents. Dr. Gelernter wasn't even listed on the patent as an inventor. So you're going to hear all this evidence about him being an inventor in this, and he was added later, but he wasn't added for some time.

And so all this idea about him coming up with all of these ideas, he wasn't added for some time as an inventor. And I don't know what happened there. We're going to find out, I suppose.

The government funded this. The government funded the work at Yale, and yet nowhere was that provided to the Patent Office, and it doesn't appear on the patent either that it was government funded, even though that's a requirement.

And they even licensed the government. The government has a license to these patents already because they funded it, and then later Mirror Worlds extracted licensing fees from the government.

of the patents because it's important. The issue on the value of the patents is, what would they sell for at a certain time or what could you get a license for at a certain time?

And, frankly, you're going to hear evidence that they were transferred for \$600,000 on one date -- the whole thing. Not just a license, but the whole thing. And then later they were transferred when Mirror Worlds' company failed, because they really didn't have anything new to offer anybody else.

Those patents -- not a license to those patents, but the patents were sold, all of them, lock, stock, and barrel, for like \$210,000. That's what they were sold for.

So when Mr. Carroll talks about sitting down and negotiating a deal, well, if Apple had sat down -- if Apple had a meeting, to which it didn't. If it did sit down to take a license to those patents, it would have been something less than 210,000, because it would have been a license.

And that's when the negotiation takes place. The negotiation takes place when they would have accused Apple of infringement, and you sit down and you cut a deal on that date. You don't wait until Apple is

2 But the bigger -- bigger issue in this
3 case, and I think you're going to find after you hear
4 all the evidence, is that Apple simply uses a
5 fundamentally different concept.

6 You saw the library example. Apple puts
7 all of its documents, using file names, in folders and
8 in subfolders.

9 And how does Apple allow its users to
10 find that information? By indexing the information and
11 being able to search for the information. That's how
12 Apple does it.

13 Apple does not do it the fundamentally
14 different way -- and I agree with that; it's
15 fundamentally different -- of taking all the data,
16 taking it all out of the folders, and just putting it
17 all in one stream and never using file names and never
18 using folders.

19 Apple doesn't infringe these patents, and
20 they are invalid. And I thank you in advance for your
21 time and consideration in this case.

22 THE COURT: Thank you, Mr. Randall.

23 All right, Ladies and Gentlemen of the
24 Jury, the next thing we're going to do, now that you've
25 heard opening statements, we're about to start the

2 But before we do that, I want to swear in
3 all of the witnesses that are going to be testifying.
4 So if you're a witness that's going to be testifying in
5 this case, if you would, please stand.

6 If you have any witnesses in the hallway
7 that are not in the courtroom, please ask them to come
8 in.

9 If you're going to be testifying as a
10 witness, please raise your -- please stand.

11 MR. CARROLL: We have one that's in the
12 hall, Your Honor.

13 THE COURT: All right.

14 All right. Let's start here (indicates)
15 and just state your name for the record, please, and
16 work on back.

17 WITNESS: David Gelernter.

18 WITNESS: Tribble.

19 WITNESS: John Levy.

20 WITNESS: Walter Bratic.

21 WITNESS: Steve Feiner.

22 WITNESS: Keith Ugone.

23 THE COURT: Okay. Is that all of them?
24 Did we get the one from the hallway?

25 MR. CARROLL: I haven't seen him come in

1 ~~et. Your Honor~~

2 THE COURT: Okay.

3 MR. CARROLL: But I know he's here,
4 because I ran him out earlier.

5 THE COURT: All right.

6 (Pause in proceedings.)

7 THE COURT: All right. Please raise your
8 right hand to be sworn.

9 (Witnesses sworn.)

10 THE COURT: All right. Thank you.

11 Now, the Rule has been invoked, which
12 means that if you're a witness in the case, and you're
13 not an expert or you're not a party representative, then
14 you have to remain outside of the courtroom during the
15 course of the trial, and you can't discuss the case with
16 anyone other than the attorneys involved in the case.

17 So I believe that -- do we have the other
18 witness?

19 No? Okay. No. All right.

20 I believe if -- if you're -- if you fall
21 in that category, if you're not an expert or you're not
22 a party representative, then you need to leave the
23 courtroom at this time. Otherwise, you may be seated.

24 (Witnesses leave the courtroom.)

25 THE COURT: All right. Very well.

the beginning of each day, I allow the attorneys -- they meet and confer, and they -- they have their exhibits that they're going to use during that day or that they're going to use during the trial; and if the other party has no objections to them, then I just let them offer those en masse.

So does Plaintiff have any exhibits that they wish to offer at this time?

MR. CARROLL: We do, Your Honor. I'm not sure who's going to handle that for us.

Do we have our list of exhibits?

We have them, Your Honor. Nobody wants to admit to having them.

Here we go.

THE COURT: All right. What exhibits does the Plaintiff offer? And if you have them on a list, you can just tender the list, if you've provided it to the other side.

MR. CARROLL: That's -- may we do that, Your Honor?

Do you want me to read them into the record?

THE COURT: Well, you don't need -- if you've got them on a list that you can submit as an

reviewed it and they're in agreement with you.

MR. CARROLL: Your Honor, may we give you the list as soon as somebody writes it down?

THE COURT: All right.

MR. CARROLL: I apologize.

THE COURT: Defendants, are you prepared -- do you have -- are you prepared -- do you have your list of exhibits?

MR. PLATT: Yes, Your Honor.

THE COURT: All right. If you would, bring it up. And you've exchanged that with counsel?

MR. PLATT: I will get them -- we've talked about those, and I'll get them a copy of that list.

THE COURT: Okay. Now, here's what needs to happen. Y'all need to get together before you come in and go over the list, and I'm getting ready to ask Mr. Carroll if they have any objection to your exhibits; and if he hasn't seen the list, I bet his answer is going to be: I don't know, right?

MR. CARROLL: That's correct, Your Honor.

THE COURT: Okay. So -- and let's get this straight over the noon hour, and when we come back, we'll take care of that.

1 MR. PLATT: Yes, Your Honor.

2 THE COURT: And this will save us a lot
3 of time, because we'll get these all in rather than
4 offering them one at a time in the trickle effect.

5 All right. Plaintiff may call its first
6 witness.

7 MR. CARROLL: We call Dr. Gelernter, Your
8 Honor.

9 THE COURT: Dr. Gelernter.
10 How is the jury doing? Anybody need a
11 break before we start?

12 Okay. All right. We'll go for about 45
13 minutes, until probably about 11:45, and then we'll take
14 our lunch break.

15 MR. CARROLL: If the Court please, Your
16 Honor.

17 THE COURT: You may proceed.

18 MR. CARROLL: Thank you, Your Honor.

19 DAVID GELERNTER, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

20 DIRECT EXAMINATION

21 BY MR. CARROLL:

22 Q Dr. Gelernter, will you introduce yourself to
23 the jury over here, please?

24 A I'm David Gelernter. I'm a professor of
25 computer science at Yale University in Connecticut.

Q I introduced you to the jury a little bit ago

and I also introduced your wife, Jane. How long have

you two been married?

A We've been married 25 -- 26 years.

Q You really need to get that one right.

A I do. I'm sorry. I'm sorry.

Q Even professors need to get that one right.

A You have a point.

Q Are there more Gelernters in the household

than you and Jane?

A Yeah. We have two boys. Daniel is 23, and

Josh is 20.

Q Let me ask you this before we get too much

further down the road.

I wrote down this quote from the screen while
Mr. Randall from Apple was talking to the jury, and you
heard it, too. It was Steve Jobs, and the quote I wrote
down was: We've got zillions of file folders, but we
can't find anything.

Did you hear Mr. Jobs up on the screen saying
that?

A Yes, I did.

Q Do you agree with Steve Jobs that one of the
problems of computers is that we have zillions of file
folders, but we can't find anything?

2 Q Is that what your invention is all about?

3 A One of the main things, one of the important
4 things it's all about.

5 Q Okay. And when Mr. Jobs said that the
6 solution to that was in this feature that he calls
7 Spotlight, is that what you've sued in this case?

8 A That's one of the things, right.

9 Q Okay. How old a fellow are you?

10 A 55.

11 Q Can you tell us a little bit about your
12 background, where you grew up, what your folks did, that
13 kind of thing?

14 A Well, let's see. I grew up in -- near New
15 York City, in the suburbs around New York City. My
16 father, a physicist by training, was one of the first
17 computer scientists, one of the inventors of computer
18 science and artificial intelligence. So I grew up
19 around computers.

20 Q Let me interrupt you right there.

21 Would you tell the jury what -- in the world
22 of computers, what the term artificial intelligence
23 means?

24 A Well, artificial intelligence, there's
25 argument about the definition. It comes down to

1 attempting to make the computer act in such a way that
2 if a person were to do it, you would call it
3 intelligent, as opposed to automatic, routine.

4 Q Is that the world of -- the part of the
5 computer world that your dad was involved with?

6 A He was one of the inventors in the late 1950s,
7 right.

8 Q Dr. Gelernter, did any family member of yours
9 have an experience with computers that kind of drove you
10 in the direction that you went to end up with these
11 three United States patents?

12 A When I -- when I did finally start -- start --
13 pick out computer science to concentrate on, after I met
14 my wife, Jane, she was a guideline for me from the very
15 beginning.

16 She represents for me the sort of computer
17 user who is a highly intelligent -- highly intelligent
18 person, who doesn't take to computers, who doesn't enjoy
19 playing with them, doesn't have any particular feel for
20 computers, who is intimidated by computers.

21 And it seems to me that my job -- our jobs in
22 general as computer scientists is to make computers
23 easy, pleasant, natural to use for people like Jane,
24 so -- so the burden is not on her to figure out what's
25 going on; the burden is on the computer to make things

the attention, or the interest to worry about the intricacies of the operation.

Q Well, let me ask you this: Have you -- have you made any progress with Jane? Is she any closer to being a computer person than she was when you married her?

A She's no closer to liking computers, but she -- we sure made progress with Lifestreams.

Q Okay. Good.

A She was always our benchmark.

Q I told the jury you didn't start out being a computer guy or trying to be a computer guy. Would you tell the jury a little bit about that?

A My background as a college student in the first years of my graduate study were in theology and Bible and Judaism.

Q And where did you do your undergraduate studies?

A At Yale.

Q What caused you to switch gears from being a rabbi or a preacher to become a computer scientist?

A Well, I never entirely switched gears. I still write about and lecture about the Bible and religion. It was mainly a practical matter. A man has

responsibility to support his wife and family, and
jobs for -- in teaching, in teaching theology and Bible
are just hard to find. They were and are.

Q All right. Is there any overlap in those two
disciplines, as far as you can tell?

A There is kind of an overlap in that anybody
who comes out of the world of theology knows
something -- you know, also, and you know Jane, which is
that finding computers intimidating doesn't mean you're
dumb.

Finding them difficult to use or a nuisance to
use doesn't mean you don't have the intelligence to
operate them. Some of the very smartest and deepest
people I know in fields like theology and Bible, like
Jane, don't like computers, don't get along with them,
find them hard to use.

And I, too, often found people in computer
science dismissing that whole population as being not
smart enough to deal with our software. It seems -- it
seems to me, the problem is with our software, if
they're having trouble.

Q So it's not the people who aren't smart enough
to work the computer; it's the computer isn't smart
enough to adapt to the folks?

A The computer and the -- and the -- and the

1 people who build it aren't smart enough to understand
2 the needs of the users.

3 Q All right. The jury saw the cover page of
4 your book Mirror Worlds that you wrote in 1991. Have
5 you written other books?

6 A I've written other books, maybe a dozen or so
7 in total.

8 Q How many of them deal with computers?

9 A Five -- five, six, depending on how you count.

10 Q All right. Do you write textbooks, that sort
11 of thing?

12 A A couple of textbooks dealing with advanced
13 topics in software.

14 Q And you write about things other than
15 technical matters, do you not? You wrote about the 1939
16 New York World's Fair, did you not?

17 A I wrote about the 1939 New York World's Fair.
18 The last two books I've published were about Americanism
19 and about Judaism.

20 Q Okay. Have you written any -- what some folks
21 would call scientific articles?

22 A Many. Scientific, not only insofar as they
23 were aimed at scientists but about scientific topics for
24 a broader readership.

25 Q Have you been asked to write technical

1 articles by magazine editors of magazines that we might
2 recognize?

3 A Sure. Time magazine, for example, some years
4 back was doing a series of profiles of leaders of the
5 technology and computing industry, and they asked me to
6 write a piece about Bill Gates, who was -- they had --
7 the head of Microsoft and one of the really prominent
8 people in the field.

9 Q So Bill Gates is to Microsoft what Steve Jobs
10 is to Apple?

11 A Fair enough, yes.

12 Q And you wrote about him?

13 A I wrote about him.

14 Q You told us -- or I told the jury, I guess,
15 that you had a Ph.D., a doctorate. Tell the jury about
16 that.

17 A Well, a Ph.D. or doctorate is -- is a degree
18 that -- that -- that is a kind of certification that
19 says that the college issuing the degree believes that
20 you are qualified to go out and do research and to teach
21 this field to college students and to graduate students.

22 Q So -- and by the way, do you mind moving that
23 mic just a tad closer?

24 A Yeah. (Complies.)

25 Q Thank you.

Okay.

Q (By Mr. Carroll) All right. But I got to warn you, don't get too close or you'll buzz.

A Yeah. Okay.

Q Okay.

A Right.

Q Where did you get your doctorate from?

A From the State University of New York at Stony Brook.

Q Is that a public university?

A It's a public state university, yes.

Q So when did you end up at Yale?

A That's kind of complicated. I was an undergraduate at Yale. I began as a graduate student in Bible at Yale. Then I moved to Stony Brook to study computer science, came back to Yale as a -- as a professor on the faculty in computer science.

Q And -- and that's what you do today.

A That's what I do today.

Q Let me ask you something before I forget about it. Mr. Randall over here said something about the government, the United States Government, paying you to come up with your inventions; is that true?

A No, that is -- that's false. The -- the

research support for certain research projects. We do a bunch of different things at Lifestreams, and associate work is only one of them. We never got any government funding to support this Lifestreams research.

Q He also told the jury that the government has a license to the three patents that the Patent Office issued to you and to Dr. Freeman; is that true?

A Not that I know of.

Q But if they do, that's the same patent that Apple wants to kill if the government, in fact, has a license, correct?

A Right. Yep.

Q When -- when a person wants to get a Ph.D., does she or he have to write a paper or do research or do something that's reviewed by the professors?

A Well, in a -- in a scientific field in general, you do -- do you a piece of research that is regarded as original by the faculty, and then you write it up in a -- in a dissertation or something like a thesis, Ph.D. thesis, which may be 100, 150, 200 some-odd pages.

And then you defend the thesis, in effect, convincing the faculty or the department that your work is new and that your understanding of the field is solid

1 and that you deserve to be granted this degree.

2 Q That sounds an awful like the patent process
3 to me.

4 A True. Yeah. True enough. It is in many
5 ways.

6 Q Did you do one of these dissertations at Stony
7 Brook?

8 A Yes, I did. Anybody who has a Ph.D. does.

9 Q What was your Ph.D. dissertation at Stony
10 Brook about?

11 A It was on a system that allowed computers to
12 communicate with each other conveniently, computers that
13 were connected in a network, a topic that's called
14 parallel programming or distributed programming or
15 network programming, a system I designed called Linda.

16 Q Now I'm going to put you on the spot here.
17 Tell the jury in front of your wife who Linda was.

18 A A girlfriend from --

19 Q Before you met Jane.

20 A From before. From before.

21 Q All right.

22 A Long ago.

23 Q Does -- does Linda -- or did Linda have
24 anything to do with the ideas that became the three
25 patents that we're suing Apple over?

1 A The girl didn't, and the research is separate.
2 It's a separate project.

3 Q Okay. But I guess my question is -- I didn't
4 ask it very well -- do -- do -- did the ideas that you
5 came up with and presented in your doctoral thesis that
6 you call Linda, do those ideas have anything to do with
7 the three patents that we're suing Apple over?

8 A They lead -- they lead into a research project
9 I called Mirror Worlds, and Mirror Worlds leads into
10 Lifestreams. So these projects flow together into -- in
11 a natural -- in the natural course of work.

12 Q But they're not the same?

13 A They're not the -- they're not the same.

14 Q Okay. When did you do the research for Linda?

15 A The research for Linda was while I was a
16 graduate student, toward -- towards the end of that
17 period, which was in the early 1980s, 1980, '81, '82.

18 Q Okay. And Apple showed us a clip from
19 President Reagan back in the early '80s. '80, '81, when
20 you were doing this research to write your paper, was
21 there an internet?

22 A In -- the internet -- the internet as such was
23 just getting underway in 1982, '83.

24 Q Was there a worldwide web?

25 A No. The worldwide web didn't -- didn't come

1 into existence until the later -- until the 1990s

2 Q Were there personal computers like the Macbook
3 Pro?

4 A Nothing like the Macbook Pro. We were -- in
5 the early '80s, at the very beginning, the very
6 beginning of the personal computer period, the IBM PC,
7 1981, the Mac, I think, was 1984. So this was the --
8 the opening -- opening phase.

9 Q Okay. Was Linda designed for whatever
10 personal computers which existed at the time, or was it
11 designed for something bigger?

12 A Linda was really intended for larger
13 computers. Not for individual users, but for
14 scientists, engineers, researchers, who had the large
15 programming problems. They needed to run fast.

16 Q The three patents we're suing Apple over in
17 this case, are they personally designed for personal
18 computers like this one or for the bigger computers like
19 Linda was created for?

20 A It was aimed at exactly the users and the
21 users of that machine. Not scientific or technical
22 users, but users like my wife, users who -- everyday
23 users of computers.

24 Q Did anybody in the world of computers, any of
25 the companies, take interest in Linda?

1 A There was a lot of interest in Linda as the
2 1980s went on. Not -- not immediately, but -- but,
3 yeah, there was considerable interest by the end of the
4 '80s.

5 Q To the point where anybody used it?

6 A Linda was widely used. I would say all over
7 the world, especially in two areas, in certain kinds of
8 scientific computations, particularly molecular
9 dynamics, which had to do with drug design and
10 pharmacology, and was and continues to be widely used in
11 financial-services-type companies.

12 Q Did you apply for a patent on -- excuse me --
13 on the Linda idea?

14 A Never occurred to me.

15 Q Okay. Dr. Gelernter, would you explain to the
16 jury your philosophy about the relationship that ought
17 to exist between people and machines, such as computers?

18 A When you deal with a machine, the burden of
19 making your dealings simple, easy, natural should fall
20 on the machine. It should be up to the machine; to be
21 up to the machine, to be simple to use, natural to use,
22 easy to use.

23 Q Tell the little -- little -- tell the jury a
24 little about your writing of this Mirror Worlds book.

25 A My thought in writing Mirror Worlds was that

1 eventually, the world, the entire world, the world in
2 which we live, the world of institutions that we deal
3 with, of the companies we work for, the schools we go to
4 would be mirrored, mirrored in the computers of the
5 internet the way a small village in New England is
6 mirrored in the still service of a mill pond.

7 It would be mirrored in all its action, in all
8 its liveness, and the software that -- in which it would
9 be mirrored would be as easy to use as a mirror. You
10 just look at it, you would look at your computer screen,
11 and you'd see one part of the world there or some part
12 that you needed to deal with or some part that you were
13 interested in.

14 Q Let me read you this little blurb from the
15 prologue to your book, and I'd ask you to explain to the
16 jury what you were talking about. And this was back in
17 1991, right?

18 A Right.

19 Q That's right after the Berlin Wall fell.

20 A Yep. Right. Right. Right.

21 Q That seems like a long time ago, doesn't it?

22 A Yes.

23 Q All right. Let me read this to you and to the
24 jury, and then I want your comments.

25 People are drawn to software gadgets. When

1 you switch one on, you turn the world, like an old
2 sweater, inside out.

3 You stuff the huge multi-institutional rat
4 work that encompasses you, into a genie bottle on your
5 desk. You can see over it, under it, and through it.
6 You can see deeply into it.

7 A bottled institution cannot intimidate,
8 confound, or ignore its members. They dominate it.

9 Who's the they?

10 A Users, citizens. Users of computers; citizens
11 of the nation.

12 Q Who's the it?

13 A It? The insti -- the -- the bureaucracy, the
14 institutional bureaucracy with which we deal, all the
15 institutions that we deal with in our daily lives.

16 But I feel exactly the same way when it is the
17 computer. I -- I -- I will not tolerate and I don't
18 think any American should tolerate being dominated or
19 pushed around by the institutions with which I deal in
20 this democracy. And I don't think a user should be
21 pushed around by the computer he deals with.

22 Q Did your book get a lot of buzz, a lot of
23 attention?

24 A It's fair to say, yes, it did.

25 Q The jury is going to hear a little bit later

1 in the case about an article that a fellow at the New
2 York Times wrote about it. Can you tell the jury about
3 that?

4 A That was an article by John Markoff, who
5 wasn't -- he was a technology reporter for the New York
6 Times.

7 It was a -- it was a large splashy piece in
8 the Sunday New York Times on the front page of the
9 business section, and John Markoff wrote in that piece
10 about -- about the book Mirror Worlds and the idea and
11 also about our previous work on Linda and computer
12 communication.

13 Q Was all the attention you got after writing
14 the book a positive?

15 A Not hardly.

16 Q Tell the jury about that.

17 A Well, whereas any book has its -- has its
18 critiques, as well as its admirers, but there was also a
19 terrorist attack that was -- on me that was associated
20 either with the publicity for the book itself or with
21 this very prominent New York Times story that was about
22 the book.

23 Q And tell the jury a little bit about that.

24 A A mail bomb was -- was sent to me, and it
25 looked a lot like a Ph.D. dissertation somebody might be

2 Do you -- do you --

3 Q Go ahead.

4 A I was pretty badly hurt. There was nobody in
5 the building because I tended to come to my office
6 early, which -- which at Yale is a quarter after 8:00.
7 There was nobody there.

8 Q That's early?

9 A That's early at Yale University. I was sort
10 of a weirdo for doing that.

11 There was nobody -- there was nobody else in
12 the building, so I decided I better walk, if I could, to
13 the -- to the health -- to the clinic, which, thank God,
14 was nearby.

15 And -- and -- and I did, arriving, I'm told,
16 with a measured blood pressure of zero. And from --
17 from there into an ambulance and weeks of surgery that
18 are -- more or less have disappeared from my mind, and
19 the ICU on the critical list and so forth. And thank
20 God, later in the summer, I started to recover.

21 Q And that -- and that was June of '93?

22 A That was June of '93.

23 Q As a matter of fact, you were one of two
24 victims attacked on the same day, were you not?

25 A Yes. There was also a distinguished

2 Francisco.

3 Q Now, you've heard Apple's lawyer, 20 days ago,
4 refer to that as an accident. Was that an accident?

5 A That was the farthest thing from an accident I
6 think I've ever encountered. The guy was trying to kill
7 me, and he came pretty close.

8 The next -- his next target died. The
9 geneticist and myself were lucky.

10 Q How long were you recuperating in the hospital
11 after that attempt on your life?

12 A Oh, I was in the hospital for a good part of
13 the summer. I guess the bomb was towards the end of
14 June, and I was in the hospital through sometime in
15 August, I think mid-August.

16 You asked about recovery. Some injuries are
17 permanent and will never be recovered. Some -- some
18 damage is still under treatment. But the really
19 difficult period of getting things -- getting myself
20 pieced back together to the extent that was possible
21 took about a year, roughly a year, from June '93 to June
22 '94.

23 Q Now, I told the jury a little while ago that
24 during this period of recovery, you worked on putting
25 the ideas in that Mirror Worlds book into action in

1 terms of these three patents, is that true?

2 A Yes, in the sense that Mirror Worlds refers,
3 in a very vague and preliminary way, to the ideas that
4 became -- that were eventually expressed in those
5 patents.

6 But Mirror Worlds is a huge -- a huge, very
7 ambitious project dealing with the whole world, getting
8 the whole world under control, and the way the worldwide
9 web really encompasses the whole world. And that's why
10 the book is to have forecasted all that.

11 But when somebody tries to kill you and nearly
12 succeeds, it brings you down to earth, or it did me,
13 anyway, and focuses your attention on -- on -- on things
14 that are more local and near to home on -- on -- on the
15 span of a life, on one life span, one lifetime, and this
16 was a period in which Lifestreams -- the idea of
17 Lifestreams emerged as a mirror not of the whole world
18 but of one person's life, short or long.

19 So it was still just preliminary. I mean, it
20 certainly wasn't the patents or the material in the
21 patent, but this idea of -- of -- of mirroring --
22 mirroring one person's life emerged during this period.

23 Q All right. Let me ask you this: You were
24 sitting right here next to me when you and I and the
25 jury saw some of the slides that Apple put up on their

2 Do you remember that one?

3 A Yes, I do.

4 Q And do you remember that Mr. Randall, Apple's
5 lawyer, told the jury that one of the things that made
6 your invention special was that it involved or included
7 this Lifestreams concept.

8 You heard him say that.

9 A I did.

10 Q Is that true?

11 A I can't -- I can't accept the slide as it was
12 explained.

13 Q Well, I understand that. But did your concept
14 of Lifestreams involve, just like my life, a past,
15 today, the present, and hopefully, tomorrow, the future?

16 A Yes, absolutely.

17 Q Why -- why is that important for the jury to
18 understand that simple concept in trying to understand
19 what your patents are?

20 A Well, there's several aspects to it. The --
21 one, and one of the most important, is that when I look
22 in that library, I look at a collection of books, and I
23 ask, where should I look for this book, if everything is
24 in one -- in one stream, that answer always has one
25 question (sic): It's in the stream. You don't have to

there.

So one aspect of this is just one place to go,
one place to turn.

The idea of a diary, the idea of a lifestream
mirroring a person's experience reflects the fact
that -- and this is true for all of us. We experience
life day by day, hour by hour. That's the way life is
arranged. We flow through time.

Life is organized in time. Everybody knows
what a diary is. Everybody knows what a journal is.
When I think about my life, I know what I was doing
yesterday and last week. I know what I'm doing today.
I know what appointments I have tomorrow. I know maybe
what I plan to do a week from now.

So it -- I wanted software to be simple,
intuitive, natural. I wanted you to be able to
understand in 30 seconds how it worked. I wanted it to
use natural human ideas rather than esoteric, technical
ideas.

Everybody knows -- everybody knows what a
diary is, and it's important; it's easy; it's natural.

Q By the way, did you keep a journal while you
were in the hospital recovering from your -- the attempt
on your life?

1 A I had a difficulty of not being able to write
2 during that period, but I would have. I would have.

3 Q I want to go back to the question I asked you
4 about 20 minutes ago, and that is, your agreement with
5 Steve Jobs on the screen that -- and this is in 2004, I
6 believe Mr. Randall said. How many years after your
7 patents would that have been?

8 A The patent -- the first patent was filed in
9 '96 and granted in '99.

10 Q So that would have been at least five years
11 after your patented invention that he said: We have a
12 zillion file folders, but we can't find anything.
13 And you agreed with him that that was a problem.

14 A Absolutely.

15 Q Now, tell the jury why that has -- that
16 problem has nagged at you and led you to invent what you
17 invented, the whole idea. And start from the premise
18 that not all of us in the courtroom are computer folks,
19 me included.

20 A I think you're asking two questions about the
21 problem, the nature of the problem, and the particular
22 solution that I had --

23 Q Let me -- let me -- if I can, let me start by
24 asking one.

25 Tell the jury what the concept of files,

2 juror has a folder in her or his lap. How does that
3 work in the world of computers? How do those same
4 folders work in computers?

5 A Well, it's a little more complicated, as you
6 would expect, because a computer is there to handle
7 enormous amounts of information and doesn't have to play
8 by the rules that govern our use of physical objects.

9 So the world of files and folders is -- is a
10 world of containers within containers within containers.
11 If you picture a mess of Tupperware containers, and
12 you've got big ones, and there are little ones inside
13 those, and there are smaller ones inside those, the
14 world of files and folders is a world -- first of all, I
15 don't have any librarian to arrange it for me.

16 The world of files and folders is a world I,
17 the owner of the computer or the user of the computer,
18 arrange. I decide, you know, what are the major
19 categories for my information?

20 And there's going to be a box labeled bills,
21 and there's going to be a box labeled medical
22 information, and maybe there's going to be a box labeled
23 Jane's stuff, if she -- if she's not using the computer,
24 and I'm using it for her.

25 Q Okay. I want to interrupt you.

MR. CARROLL: Your Honor, I've got a

2 couple of demonstratives that I'd like to ask permission
3 for Dr. Gelernter to come down so he can see them in
4 front of the jury.

5 THE COURT: All right. And, Mr. Carroll,
6 we're getting toward the time to break for lunch,
7 so whenever you --

8 MR. CARROLL: This would be a perfect
9 spot.

10 THE COURT: All right. Well, I think
11 we'll take our recess at this point then.

12 Ladies and Gentlemen of the Jury, we're
13 going to be in recess until 1:00 o'clock, so that will
14 give you an hour and 15 minutes to sort of learn your
15 way around town and find where you'd like to eat.

16 There are several places on the Square.
17 There's a Subway. There's a hamburger place, a Mexican
18 food place.

19 Please plan to be back and ready to go at
20 1:00 o'clock. We'll try to start shortly at 1:00.
21 Please remember my instructions. Don't discuss the case
22 among yourselves or with anyone else during your break.
23 And we'll take this hour and 15 minutes for lunch.

24 Tomorrow we'll probably try to do it in
25 about an hour, so -- but we'll give you a little extra

COURT SECURITY OFFICER: All rise.

(Jury out.)

(Lunch recess.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of our abilities.

/s/_____
SHEA SLOAN, CSR Date
Official Court Reporter
State of Texas No.: 3081
Expiration Date: 12/31/10

/s/_____
JUDITH WERLINGER, CSR Date
Deputy Official Court Reporter
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